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Compiled by
BION M. GREGORY
Legislative Counsel

CHAPTER 1138

An act to amend Sections 26608.3, 69899.5, 69994.2, 70045.8, 70046.1, 70059.7, 71040.8, 73084.1, 73084.2, 73084.3, 73084.4, 73084.5, 73084.6, 73086, 73087, 73089, 73096, 73101.5, 73107, 73113, 73113.5, 73114, 73431, 73432.1, 73433, 73433.1, 73433.2, 73434, 73435, 73436, 73437, 73483, 73484, 73485, 73486, 73487, 73641, 73643, 73644, 73649, 73705, 73706, 73708, 73710, 73713, 73793, 73796, 73797, 73798, 73951, 73953, 73954, 73960, 74004, 74010, 74011, 74012, 74013, 74021, 74192, 74193, 74201, 74207, 74208, 74341, 74343, 74344, 74345, 74346, 74348, 74351, 74642, 74643, 74644, 74645, 74647, 74663, 74665, 74705, 74708, 74743, 74744, 74745, 74782.1, 74783, 74784, 74785, 74803, 74804, 74805, 74806, 74807, 74808, 74936, 74937, 74940, 74949.1, 74952, 74954, 74954.5, 74955, 74956, the heading of Article 40 (commencing with Section 74980) of Chapter 10 of Title 8, 74980, 74981, 74982, 74984, 74985, 74986, 74987, and 74989 of, to add Sections 73433.3, 73433.4, 73436.1, 73436.2, 73649.1, 73960.1, 74791, 74935.6, 74935.7, and 74964 to, to add Article 12 3 (commencing with Section 73784) to Chapter 10 of Title 8 and Article 13 (commencing with Section 73820) to Chapter 10 of Title 8 to, and to repeal Sections 71603.4, 71603.7, 73432, 74990, and 74992 of, the Government Code, relating to courts.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 26608.3 of the Government Code is amended to read:

26608.3. (a) In Shasta County, the board of supervisors by ordinance or resolution may transfer from the sheriff to the marshal of the Shasta County Municipal Court the duty to serve all writs, notices and other process issued by any state court, or other competent authority.

(b) After adoption of the ordinance or resolution pursuant to subdivision (a), and notwithstanding any other provision of law, in Shasta County the marshal shall have the duty to serve all writs, notices and other process issued by any state court or other competent authority, and the sheriff shall be relieved of any obligation imposed by Section 26608 and any liability imposed by Section 26663 or 26664.

(c) Nothing in this section shall be construed as limiting the responsibility or authority of a private person or registered process server from serving process and notices in the manner prescribed by law, nor shall it limit the authority of the sheriff or any other peace officer to serve warrants of arrest or other process specifically directed by a court to the sheriff or any other peace officer.

SEC. 2. Section 69899.5 of the Government Code is amended to read:

69899.5. In the County of Orange, a majority of the judges of the superior court may appoint or delegate authority to the Superior Court Executive Officer to appoint the following officers and employees whose salaries shall be:

Number of Positions	Title	Salary Range
4	Account Clerk II-Superior Court	D35 S/3
1	Account Clerk III-Superior Court	D40
2	Administrative Services Assistant II-Superior Court	ML4
1	Assistant Superior Court Executive Officer	ML7
11	Attorney III-Superior Court	L3
19	Court Mediator	A60
3	Data Entry Specialists-Superior Court	D39 S/2
1	Director, Mediation/Investigative Services	A68
2	Executive Secretary to the Presiding Judge	D48
2	Information Processing Technician-Superior Court	D37 S/3
2	Master Calendar Assistant	D42
3	Mediation/Investigative Services Supervisor	A64
14	Office Assistant-Superior Court	D33 S/5
18	Office Specialist-Superior Court	D39
1	Principal Account Clerk-Superior Court	D42
2	Probate Checker	A48
5	Probate Examiner II	A55
1	Probate Investigator II	A53
3	Probate Investigator I	A51
1	Secretary III-Superior Court	D44
7	Secretary I-Superior Court	D36 S/5
11	Senior Judicial Secretary	D44
1	Staff Analyst III-Superior Court	ML4
1	Staff Analyst II-Superior Court	ML3
1	Storekeeper I-Superior Court	H10

3	Store Clerk-Superior Court	H7
12	Superior Court Commissioner	85% of Salary of Superior Court Judge
3	Superior Court Division Director	ML5
5	Superior Court Services Coordinator II	A62
2	Superior Court Services Supervisor I	D53
1	Superior Court Services Supervisor II	D56
1	Supervising Account Clerk-Superior Court	D48
1	Supervising Attorney-Superior Court	L4 S/2
1	Supervising Clerk III-Superior Court	D45
1	Supervising Clerk I-Superior Court	D40
1	Supervising Judicial Secretary	D47
1	Supervising Probate Examiner	A59
1	Systems Analyst II-Superior Court	A55
1	Systems Analyst III-Superior Court	A60
2	Systems Analyst IV-Superior Court	A64

The references to a numbered salary range in this section are to the salary schedule in the Personnel and Salary Resolution of the County of Orange.

All personnel appointed pursuant to this section shall serve at the pleasure of the majority of the judges and may at any time be removed by the majority of the judges in their discretion or of the Superior Court Executive Officer when so delegated.

With the approval of the board of supervisors, the superior court may establish such additional positions, titles and pay rates as are required, and may appoint and employ such additional commissioners, officers, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Rates of compensation of all officers, assistants, and other employees authorized by this section, except those of court commissioners, may be adjusted by joint action and approval of the board of supervisors and a majority of the judges of the court, the Superior Court Executive Committee or the Superior Court Executive Officer when so delegated.

All court personnel shall be entitled to such step advancement,

vacation, sick leave, holiday benefits, other leaves of absence, lump-sum payments for sick leave and vacation when separated from the service, inclusion in the retirement system of the County of Orange and other benefits as may be adopted in a memorandum of understanding with a recognized employee organization or as may be directed by rules adopted by a majority of the judges as are provided to county employees of such county.

Superior court commissioners shall be entitled to such benefits as may be directed by rules adopted by the majority of the judges.

Where statutes require implementation by local ordinances for the extension of such benefits to local officers and employees, these benefits may be made applicable, by rule, to such employees.

Rules of the court may include other matters pertaining to the general administration of the court, including conditions of employment of such personnel. When such rules are adopted by a majority of the judges and filed with the Judicial Council they shall have the same status as other rules of court adopted pursuant to Section 68070.

When requested to do so by the court, the county shall furnish to the superior court such services as may be required in connection with the recruitment and employment of such personnel.

All such personnel and judges shall be allowed actual traveling and necessary expenses incurred while engaged in the duties of their employment or office outside of the county.

SEC. 3. Section 69994.2 of the Government Code is amended to read:

69994.2. The regular official phonographic reporters shall be compensated at an annual salary of thirty-eight thousand eight hundred seventy-nine dollars ($38,879), except that these reporters may be employed at an annual salary of thirty-one thousand nine hundred eighty-eight dollars ($31,988) for the first year of service, at an annual salary of thirty-three thousand five hundred ninety-six dollars ($33,596) for the second year of service, at an annual salary of thirty-five thousand two hundred sixty-six dollars ($35,266) for the third year of service, and at an annual salary of thirty-seven thousand twenty dollars ($37,020) for the fourth year of service. The judges of the superior and municipal courts of such county, a majority concurring, may appoint a supervising phonographic reporter at an annual salary of forty-three thousand two hundred eighty-four dollars ($43,284), except that such reporter may be employed at an annual salary of thirty-nine thousand two hundred fifty-four dollars ($39,254) for the first year of service and at an annual salary of forty-one thousand two hundred seventeen dollars ($41,217) for the second year of service.

SEC. 4. Section 70045.8 of the Government Code is amended to read:

70045.8. (a) Notwithstanding any other provision of law, including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the official court

reporters in Butte County Superior Court:

(1) The regular full-time official court reporters under the direction of the presiding judge of the superior court shall perform the following duties:

(A) Report all criminal proceedings.

(B) Report all civil commitment proceedings and all contempt proceedings.

(C) Report all juvenile proceedings other than those heard by juvenile court referee or traffic hearing officer.

(D) Report all family law proceedings.

(E) Report all civil jury trials.

(F) Report all hearings on petitions for extraordinary relief, including, but not limited to, proceedings for injunctions, mandate, prohibition, certiorari, review, habeas corpus, and coram nobis.

(G) Report all proceedings of the grand jury when requested by the foreman, or by the district attorney or by the county counsel.

(H) Any other court proceedings when a party requests a court reporter in accordance with rules of court.

(I) Report coroner's inquests when requested by the coroner.

(J) Report proceedings for the Butte County Board of Equalization when requested by the board.

(K) When not occupied with the above duties, and upon request of a presiding judge of the municipal court and approval of the presiding judge of the superior court, he or she shall report matters listed under paragraph (1) of subdivision (b).

(b) Notwithstanding any other provision of law, including, but not limited to, Sections 70040, 70041, 70042, and 70045, the following provisions shall be applicable to the official court reporters in the Butte County Municipal Courts:

(1) The regular full-time official municipal court reporters under the direction of the presiding judges of the municipal courts shall perform the following duties:

(A) Report the preliminary examination of those accused of crimes before magistrates within Butte County.

(B) Report all felony pleas.

(C) Report any other court proceeding as required by law.

(D) When not occupied with the above duties, and upon request of the presiding judge of the superior court and approval of a presiding judge of the municipal court, he or she shall report matters listed under paragraph (1) of subdivision (a) above.

(c) The board of supervisors shall, by ordinance, specify the salary rates for official court reporters in Butte County.

In addition to the aforementioned compensation, each official court reporter shall receive twenty-five dollars ($25) per month as reimbursement for the cost of necessary supplies.

The foregoing salary established pursuant to county ordinance is for compensation for reporting services in the superior and municipal courts under subdivisions (a) and (b) of this section. For all transcriptions incident to reporting services, each reporter shall

receive the fees provided for in Article 9 (commencing with Section 69941) of this chapter.

The regular full-time official court reporters shall be entitled to the same privileges with respect to retirement, vacation, sick leave, and group insurance, which either now or hereafter may be provided by ordinance to other employees of the said county.

(d) When the regular full-time official court reporters are occupied in the performance of their duties and services pursuant to the provisions of subdivisions (a) and (b), the judge or judges of the superior and municipal courts may appoint as many additional official court reporters, who shall be known as official reporters pro tempore, as the business of the courts may require in order that the judicial business of the courts in such county may be carried on without delay. They shall be paid in accordance with the per diem, transcription, and other fee provisions of Article 9 (commencing with Section 69941) of this chapter. Such per diem, traveling and other expenses, and the fees chargeable to the county under the terms of these provisions shall be a proper county charge.

SEC. 5. 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 five hundred thirty-one dollars and eighty-four cents ($1,531.84) which salary shall include payment for services in reporting all proceedings in the superior or municipal 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 fifty-five dollars ($155) or seventy-seven dollars and fifty cents ($77.50) 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, 1991, 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. 6. Section 71040.8 of the Government Code is amended to read:

71040.8. The Ukiah Justice Court District and the Little Lake Justice Court District are hereby consolidated, to be known as the "Mount San Hedrin Municipal Court District." The municipal court district shall have two judges.

SEC. 7. Section 70046.1 of the Government Code is amended to read:

70046.1. In Santa Clara County, the board of supervisors shall fix the salary of regular official reporters, which shall not be less than a biweekly salary of one thousand four hundred sixty-four dollars and fifty-six cents ($1,464.56), and the compensation of official reporters pro tempore, which shall be at a rate not less than eighty-eight dollars and sixty-one cents ($88.61) per half day and one hundred seventy-seven dollars and twenty-one cents ($177.21) per day.

During the hours that 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.

SEC. 8. Section 71603.4 of the Government Code is repealed.

SEC. 9. Section 71603.7 of the Government Code is repealed.

SEC. 10. Section 73084.1 of the Government Code is amended to read:

73084.1. The clerk and administrative officer of the municipal court for the Alameda Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.
(b) Two deputy clerks, municipal courtroom clerk.
(c) Three deputy clerks, supervising municipal court clerk I.
(d) One deputy clerk, senior municipal court clerk.
(e) Six deputy clerks, municipal court clerk.
(f) One deputy clerk, clerk II.
(g) One deputy clerk, accounting technician.

Not more than one such deputy clerk may be assigned as court interpreter at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 11. Section 73084.2 of the Government Code is amended to read:

73084.2. The clerk and administrative officer of the municipal court for the Berkeley-Albany Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.
(b) Three deputy clerks, supervising municipal court clerk II.

(c) Five deputy clerks, municipal courtroom clerk.
(d) Five deputy clerks, senior municipal court clerk.
(e) Eight deputy clerks, municipal court clerk.
(f) Three deputy clerks, clerk II.
(g) One deputy clerk, secretary II.
(h) One deputy clerk, supervising accountant I.
(i) One deputy clerk, account clerk II.
(j) One deputy clerk, account clerk I.
(k) Four deputy clerks, data input clerk.

Not more than three such deputy clerks may be assigned as court interpreter at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 12. Section 73084.3 of the Government Code is amended to read:

73084.3. The clerk and administrative officer of the municipal court for the Oakland-Piedmont-Emeryville Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.

(b) Three deputy clerks, division chiefs. The clerk and administrative officer may transfer the division chiefs from one division to another regardless of any resulting change in salary as set forth in subdivision (a) of Section 73086.

(c) Four deputy clerks, assistant division chiefs
(d) One deputy clerk, calendar coordinator.
(e) Six deputy clerks, supervising municipal court clerk II.
(f) Eighteen deputy clerks, municipal courtroom clerk.
(g) Six deputy clerks, supervising municipal court clerk I.
(h) Six deputy clerks, senior municipal court clerk.
(i) Sixty deputy clerks, municipal court clerk.
(j) Thirteen clerks, clerk II.
(k) One deputy clerk, supervising secretary II.
(*l*) Three deputy clerks, secretary I.
(m) Thirteen deputy clerks, data input clerk.
(n) One deputy clerk, information systems analyst.

Not more than eight such deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 13. Section 73084.4 of the Government Code is amended to read:

73084.4. The clerk and administrative officer of the municipal court for the San Leandro-Hayward Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.

(b) Three deputy clerks, division chiefs. The clerk and administrative officer may transfer the division chiefs from one division to another regardless of any resulting change in salary as set forth in Section 73086.

(c) Nine deputy clerks, municipal courtroom clerk.
(d) Two deputy clerks, supervising municipal court clerk I.

(e) Four deputy clerks, senior municipal court clerk.
(f) Thirty-four deputy clerks, municipal court clerk
(g) Two deputy clerks, clerk II.
(h) One deputy clerk, secretary II.
(i) One deputy clerk, supervising accountant I.
(j) One deputy clerk, account clerk II.
(k) Three deputy clerks, data input clerk.
(*l*) One deputy clerk, staff services assistant.
(m) One deputy clerk, supervising municipal court clerk II.

Not more than five such deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities.

SEC. 14. Section 73084.5 of the Government Code is amended to read:

73084.5. The clerk and administrative officer of the municipal court for the Fremont-Newark-Union City Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.
(b) Six deputy clerks, municipal courtroom clerk.
(c) Three deputy clerks, division chief.
(d) Four deputy clerks, senior municipal court clerk.
(e) Twenty-two deputy clerks, municipal court clerk.
(f) Two deputy clerks, clerk II.
(g) One deputy clerk, secretary II.
(h) One deputy clerk, supervising accountant I.
(i) One deputy clerk, account clerk II.
(j) One deputy clerk, account clerk I.
(k) Seven deputy clerks, data input clerk.
(*l*) Two deputy clerks, supervising municipal court clerk I
(m) One deputy clerk, financial hearing officer.
(n) One deputy clerk, secretary I.

Not more than four such deputy clerks may be assigned as court interpreters at the additional percentage compensation provided for county employees required to possess bilingual capabilities

SEC. 15. Section 73084.6 of the Government Code is amended to read:

73084.6. The clerk and administrative officer of the municipal court for the Livermore-Pleasanton-Dublin Judicial District may appoint the following deputy clerks:

(a) One chief deputy clerk.
(b) Three deputy clerks, municipal courtroom clerk.
(c) Three deputy clerks, supervising municipal court clerk I.
(d) Three deputy clerks, senior municipal court clerk.
(e) Twelve deputy clerks, municipal court clerk.
(f) One deputy clerk, accounting technician.
(g) One deputy clerk, secretary II.
(h) One deputy clerk, clerk II.

Not more than four such deputy clerks may be assigned as court interpreter at the additional percentage compensation provided for

county employees required to possess bilingual capabilities.

SEC. 16. Section 73086 of the Government Code is amended to read:

73086. Deputy clerks, division chiefs of the following districts shall receive a biweekly salary at the rate set forth for that item number classification in the ordinance established for municipal courts:

	Ordinance Class No.
Oakland-Piedmont-Emeryville Judicial District, criminal	1680M
Oakland-Piedmont-Emeryville Judicial District, civil	1681M
Oakland-Piedmont-Emeryville Judicial District, traffic	1682M
San Leandro-Hayward Judicial District, division chief	1684M
Fremont-Newark-Union City Judicial District, division chief	1685M

SEC. 17. Section 73087 of the Government Code is amended to read:

73087. (a) Deputy clerks in each municipal court in Alameda County shall receive a biweekly salary at the rate set forth for that item number classification in the ordinance established for municipal courts as follows:

	Ordinance Class No.
Deputy clerk, municipal court clerk	1615
Deputy clerk, senior municipal court clerk	1620
Deputy clerk, supervising municipal court clerk I	1655M
Deputy clerk, supervising municipal court clerk II	1656M
Deputy clerk, municipal courtroom clerk	1660

(b) Deputy clerks in each municipal court in Alameda County shall receive a biweekly salary at the rate set forth for that item number classification in the Alameda County ordinance as follows:

	Ordinance Class No.
Deputy clerk, account clerk I	1305
Deputy clerk, account clerk II	1310
Deputy clerk, accounting technician	1315M
Deputy clerk, administrative services assistant I	0220M
Deputy clerk, administrative services officer I	0224M
Deputy clerk, clerk I	1115
Deputy clerk, clerk II	1120
Deputy clerk, data input clerk	1131
Deputy clerk, information systems analyst	0419M
Deputy clerk, secretary I	1215
Deputy clerk, secretary II	1220M

Deputy clerk, stenographer II	1210
Deputy clerk, supervising accountant I	0133M
Deputy clerk, supervising secretary I	1216M
Deputy clerk, supervising secretary II	1221M
Deputy clerk, financial hearing officer	1426

(c) Notwithstanding any other provisions of this code, the rules governing flexibly staffed classifications, the administration of the pay plan and additional compensation shall be the same as that for employees of Alameda County.

SEC. 18. Section 73089 of the Government Code is amended to read:

73089. With the approval of the board of supervisors, judges of each municipal court concerned within Alameda County may establish such additional titles and pay rates as are required and may appoint such additional deputy clerks, officers, assistants, and other employees as deemed necessary for the powers conferred by law upon the court and its members Rates of compensation of the clerk and administrative officers, deputy clerks, officers, assistants, and other employees may be adjusted by joint action and approval of the board of supervisors and the judges in each respective municipal court within the county.

If the board of supervisors provides by ordinance or resolution for any increase in the number or rate of compensation of any municipal court personnel pursuant to this section, such increase shall be effective only until January 1, 1992, and shall be effective at the same time and in the same manner as such increases for Alameda County employees generally.

SEC. 18.1. Section 73096 of the Government Code is amended to read:

73096. Official reporters of municipal courts in Alameda County, in lieu of any other compensation provided by law for their services in reporting testimony and proceedings in such court, shall receive one of the following:

(a) One hundred fifty-eight dollars and eight cents ($158.08) a day for the days they actually are on duty under order of the court.

(b) A minimum payment of seventy-nine dollars and four cents ($79.04) for serving four hours or less a day, plus an hourly rate of nineteen dollars and seventy-six cents ($19.76) for each hour served in excess of four hours, up to the maximum amount specified in subdivision (a). However, not more than three official reporters in a judicial district having three or more judges shall each receive an annual salary, vacation leave, and sick leave, in the same amounts as the official reporters of the Superior Court in Alameda County.

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, 1992, unless ratified by statute by the Legislature prior to that date.

SEC. 18.2. Section 73101.5 of the Government Code is amended to read:

73101.5. There shall be the following number of judges in divisions of the San Bernardino County Municipal Court District:

(a) In the East Division, two.
(b) In the Central Division, seven.
(c) In the Valley Division, three.
(d) In the West Valley Division, seven.
(e) In the Victorville Division, two.
(f) In the Barstow Division, two.
(g) In the Chino Division, two.
(h) In the Morongo Basin Division, one.

SEC. 18.3. Section 73107 of the Government Code is amended to read:

73107. There shall be one clerk of the San Bernardino County Municipal Court District to be known as the municipal court administrator who shall be appointed by, and serve at the pleasure of, a majority of the judges, from among applicants certified to such judges on the basis of a competitive examination pursuant to personnel rules and regulations of the County of San Bernardino. The municipal court administrator shall receive an annual salary of sixty-eight thousand dollars ($68,000) commencing July 1, 1989, with a 2.1 percent increase commencing September 23, 1989, a 2.1 percent increase commencing December 30, 1989, and a 4.5 percent increase commencing June 30, 1990, and shall be the appointing authority for those positions listed in Section 73113.

SEC. 18.4. Section 73113 of the Government Code is amended to read:

73113. The number of positions within each job classification which may be filled by appointment by the municipal court administrator and the marshal and the salary range prescribed in Section 73113.5 which constitutes the compensation for each job classification are as follows:

Appointed by the Municipal Court Administrator

Job classification	Number	Salary Range Effective 7/1/89	6/30/90
Assistant Municipal Court Administrator	1	C72	D72
Municipal Court Division Manager II	3	C59	D59
Municipal Court Division Manager I	5	C55	D55
Municipal Court Division Supervisor II	3	C51	D51

Municipal Court Division Supervisor I	5	C44	D44
Municipal Court Chief Clerk	5	C44	D44
Courtroom Clerk II	40	C41	D41
Clerk IV	10	C34	D34
Fiscal Clerk II	8	C31	D31
Fiscal Clerk III	2	C36	D36
Clerk III	93	C30	D30
Legal Procedures Clerk I	42	C32	D32
Legal Procedures Clerk II	3	C38	D38
Secretary I	1	C35	D35
Secretary II	3	C38	D38
Account Technician I	1	C40	D40
Legal Procedures Clerk III	1	C44	D44
Automated Systems Analyst II	1	C60	D60
Supervisor of Administrative Services I	1	C54	D54
Staff Analyst I	1	C48	D48
Executive Secretary II	1	C38	D38

Appointed by Marshal

Job classification	Number	Salary Range Effective 12/31/88	7/1/89	6/30/90
Marshal's Captain	3	729		
Marshal's Lieutenant	6	728		
Marshal's Sergeant	8	725		
Deputy Marshal	62	717		
Administrative Clerk II	1	443	C43	D43
Marshal's Clerk II	13	431	C31	D31
Marshal's Clerk I	13	426	C26	D26
Marshal's Technician	18	432	C32	D32
Marshal's Radio Dispatch Clerk	5	428	C28	D28
Executive Secretary II	1	438	C38	D38
Staff Analyst II	2	454	C54	D54

The marshal shall also appoint as many deputy marshal keepers as may be required by law. The deputy marshal keepers shall be compensated at the fee allowed by law for keeping property.

In hiring for vacancies in the position of deputy marshal, the marshal may appoint successful candidates as deputy marshal probationary at a flat hourly rate. The flat hourly rate shall be in the

sum of thirteen dollars and fourteen cents ($13.14) commencing December 31, 1988, and shall be payable until successful completion of a probationary period of one year, except that the marshal may extend the probationary period for not to exceed six months, after which the deputy marshal probationary shall be advanced to the deputy marshal classification at the "A" step of the appropriate salary range.

SEC. 18.5. Section 73113.5 of the Government Code is amended to read:

73113.5. Whenever reference is made to a numbered salary range in any section of this chapter, the salary schedule found in the salary ordinance of San Bernardino County in effect on July 1, 1989, shall apply.

Administration of the salary plan provided by this chapter, including the hiring date; increases within range; salary on promotion, transfer, or demotion; salary on position reclassification, obligations and benefits and all other relevant matters, shall be in accordance with the current personnel rules and ordinances of the County of San Bernardino.

Notwithstanding any other provisions of law, the salary and classifications of municipal court employees provided by Sections 73107, 73110, 73113, 73114, 73121, 73122, and this section may be increased or decreased within the range limits of the salary schedule incorporated by reference by this section in order to provide classification and compensation that is comparable to county employees of similar qualifications and experience in the classified service of San Bernardino County as such comparability is determined by the board of supervisors. Any salary increases granted or reclassifications made pursuant to this paragraph shall be effective only until January 1, 1992.

SEC. 18.6. Section 73114 of the Government Code is amended to read:

73114. By order entered in the minutes of the court, a majority of the judges may appoint up to two secretaries as the business of the court requires, to be classified as secretary II. Each shall receive a salary at a rate specified in range C38 of the salary schedule effective on July 1, 1989, and range D38 effective June 30, 1990, and be otherwise subject to the salary plan provided by Section 73113.5.

SEC. 19. Section 73431 of the Government Code is amended to read:

73431. Each municipal court district established in Kern County shall have the number of judges set forth opposite the name of the judicial district over which such court has jurisdiction.

Bakersfield Judicial District	9
East Kern Judicial District	2
North Kern Judicial District	2
South Kern Judicial District	2

SEC. 20. Section 73432 of the Government Code is repealed.

SEC. 21. Section 73432.1 of the Government Code is amended to read:

73432.1. (a) The judges of the Bakersfield Municipal Court may appoint two commissioners. The commissioners shall possess the same qualifications as the law requires of a judge of the court. Within the jurisdiction of the court and under the direction of the judges, the commissioners shall exercise the powers and perform the duties authorized by law to be performed by commissioners of the superior court and any additional powers and duties as may be prescribed by law.

(b) The commissioners shall be paid biweekly, pursuant to the payroll procedures in effect in the County of Kern, in an amount equal to 70 to 85 percent of a municipal court judge's salary. The court shall recommend to the board of supervisors the level of salary to be received by each commissioner based on his or her qualifications, performance, and other factors deemed relevant by the court, and the board of supervisors shall determine the salary level within the specified range. The biweekly salary rate of each commissioner shall be adjusted at the same time and manner and in the same percentage amount as set forth in Section 68203.

(c) In addition to the compensation provided for in this section, each commissioner shall be entitled to and shall receive on the same basis as other county employees, the same benefits and privileges with respect to retirement, group insurance, sick leave, and vacation. The commissioners shall observe the same holidays as other court employees.

SEC. 22. Section 73433 of the Government Code is amended to read:

73433. There shall be one clerk-administrator in each municipal court who shall be appointed by and serve at the pleasure of a majority of the judges of the court to which the clerk-administrator is appointed. In a court with less than three judges, the presiding judge shall appoint the clerk-administrator of the court. The clerk-administrator of the East Kern Municipal Court shall receive the biweekly salary specified in range 52.1 of the salary schedule. The clerk-administrator of the North Kern Municipal Court shall receive the biweekly salary specified in range 52.1 of the salary schedule. The clerk-administrator of the South Kern Municipal Court shall receive the biweekly salary specified in range 52.1 of the salary schedule. The clerk-administrator of the Bakersfield Municipal Court shall receive the biweekly salary specified in range 56.1 of the salary schedule. The salary of the Bakersfield Municipal Court clerk-administrator shall be

not less than 12 full range steps higher than the salary range in which the position of chief deputy court clerk is compensated.

SEC. 23. Section 73433.1 of the Government Code is amended to read:

73433.1. There shall be one assistant clerk-administrator in the Bakersfield Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 52.1 of the salary schedule.

SEC. 24. Section 73433.2 of the Government Code is amended to read:

73433.2. There shall be one assistant clerk-administrator in the East Kern Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 48.1 of the salary schedule.

SEC. 25. Section 73433.3 is added to the Government Code, to read:

73433.3. There shall be one assistant clerk-administrator in the North Kern Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 48.1 of the salary schedule.

SEC. 26. Section 73433.4 is added to the Government Code, to read:

73433.4. There shall be one assistant clerk-administrator in the South Kern Municipal Court who shall be appointed by and serve at the pleasure of the majority of the judges of the court. The assistant clerk-administrator shall receive the biweekly salary specified in range 48.1 of the salary schedule.

SEC. 27. Section 73434 of the Government Code is amended to read:

73434. There shall be one judicial secretary in the Bakersfield Municipal Court who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The judicial secretary shall receive a biweekly salary specified in range 42.7 of the salary schedule.

SEC. 28. Section 73435 of the Government Code is amended to read:

73435. The clerk-administrator of the Bakersfield Municipal Court may appoint:

(a) Three chief deputy court clerks who shall act as the supervisors of the civil, criminal, and traffic divisions of the court and each of whom shall receive the biweekly salary specified in range 43.2 of the salary schedule.

(b) Five deputy court clerks III, each of whom shall receive the biweekly salary specified in range 41.3 of the salary schedule.

(c) Twenty municipal courtroom clerks or junior municipal courtroom clerks, each of whom shall receive the biweekly salary

specified in ranges 41.3 and 38.5, respectively, of the salary schedule.

Junior municipal courtroom clerk shall be the entrance position to courtroom clerk. The clerk-administrator, with the concurrence of the presiding judge, may advance any junior municipal courtroom clerk to the position of municipal courtroom clerk without further examination, if the junior municipal courtroom clerk has served for six months and otherwise meets the qualifications for municipal courtroom clerk and if the presiding judge is satisfied with the junior municipal courtroom clerk's performance during the six-month period.

(d) One data entry operator IV who shall receive the biweekly salary specified in range 40.2 of the salary schedule.

(e) Three data entry operators II or I, each of whom shall receive the biweekly salary specified in ranges 36.2 and 34.2, respectively, of the salary schedule. Data entry operator I shall be the entrance position to the data entry operator series. The clerk-administrator may advance any data entry operator I to the position of data entry operator II without further examination if the data entry operator I has served for one year and otherwise meets the qualifications for data entry operator II.

(f) One account clerk IV who shall receive the biweekly salary specified in range 41.2 of the salary schedule

(g) One account clerk III who shall receive the biweekly salary specified in range 38.4 of the salary schedule.

(h) Seven account clerks II or I each of whom shall receive the biweekly salary specified in ranges 35.7 and 32.9, respectively, of the salary schedule. Account clerk I shall be the entrance position to the account clerk series. The clerk-administrator may advance any account clerk I to the position of account clerk II without further examination if the account clerk I has served for one year and otherwise meets the qualifications for account clerk II.

(i) Thirty-two full-time deputy court clerks II, I, or junior deputy court clerks, each of whom shall receive the biweekly salary specified in ranges 38.5, 34.5, and 31.7, respectively, of the salary schedule.

Junior deputy court clerk shall be the entrance position to the clerk's staff. The clerk-administrator may advance any junior deputy court clerk to the position of deputy court clerk I without further examination, if the junior deputy has served for six months and otherwise meets the qualifications for deputy court clerk I. The clerk-administrator may advance any deputy court clerk I to the position of deputy court clerk II without further examination if the deputy court clerk I has served for six months and otherwise meets the qualifications for deputy court clerk II.

(j) One senior secretary who shall receive the biweekly salary specified in range 41.3 of the salary schedule.

(k) One legal clerk I who shall receive the biweekly salary specified in range 39.9 of the salary schedule.

(*l*) One records clerk who shall receive the biweekly salary specified in range 38.0 of the salary schedule.

(m) One accountant III who shall receive the biweekly salary specified in range 50.4, of the salary schedule.

(n) Two recording technicians, each of whom shall receive the biweekly salary specified in range 39.5 of the salary schedule.

(o) One administrative clerk who shall receive the biweekly salary specified in range 39.4 of the salary schedule.

(p) Two court interpreters, each of whom shall receive the biweekly salary specified in range 38.5 of the salary schedule.

(q) One microphotographer who shall receive the biweekly salary specified in range 37.1 of the salary schedule.

SEC. 29. Section 73436 of the Government Code is amended to read:

73436. The clerk-administrator of the East Kern Municipal Court may appoint:

(a) Three deputy court clerks III, each of whom shall receive the biweekly salary specified in range 41.3 of the salary schedule.

(b) Nineteen full-time and three part-time deputy court clerks II, I, or junior deputy court clerks, each of whom shall receive the biweekly salary specified in ranges 38.5, 34.5, and 31.7, respectively, of the salary schedule.

Junior deputy court clerk shall be the entrance position to the clerk's staff. The clerk-administrator may advance any junior deputy court clerk to the position of deputy court clerk I without further examination, if the junior deputy has served for six months and otherwise meets the qualifications for deputy court clerk I. The clerk-administrator may advance any deputy court clerk I to the position of deputy court clerk II without further examination if the deputy court clerk I has served for six months and otherwise meets the qualifications for deputy court clerk II.

SEC. 30. Section 73436.1 is added to the Government Code, to read:

73436.1. The clerk-administrator of the North Kern Municipal Court may appoint:

(a) Two deputy court clerks III, each of whom shall receive the biweekly salary specified in range 41.3 of the salary schedule.

(b) Sixteen deputy court clerks II, I, or junior deputy court clerks, each of whom shall receive the biweekly salary specified in ranges 38.5, 34.5, and 31.7, respectively, of the salary schedule.

The position of junior deputy court clerk shall be the entrance position to the clerk's staff. The clerk-administrator may advance any junior deputy court clerk to the position of deputy court clerk I without further examination, if the junior deputy has served for six months and otherwise meets the qualifications for deputy court clerk I. The clerk-administrator may advance any deputy clerk I to the position of deputy court clerk II without further examination if the deputy court clerk I has served for six months and otherwise meets the qualifications for deputy court clerk II.

SEC. 31. Section 73436.2 is added to the Government Code, to read:

73436.2. The clerk-administrator of the South Kern Municipal Court may appoint:

(a) Two deputy court clerks III, each of whom shall receive the biweekly salary specified in range 41.3 of the salary schedule.

(b) Twenty-one deputy court clerks II, I, or junior deputy court clerks, each of whom shall receive the biweekly salary specified in ranges 38.5, 34.5, and 31.7, respectively, of the salary schedule.

The position of junior deputy court clerk shall be the entrance position to the clerk's staff. The clerk-administrator may advance any junior deputy court clerk to the position of deputy court clerk I without further examination, if the junior deputy has served for six months and otherwise meets the qualifications for deputy court clerk I. The clerk-administrator may advance any deputy court clerk I to the position of deputy court clerk II without examination if the deputy court clerk I has served for six months and otherwise meets the qualifications for deputy court clerk II.

SEC. 32. Section 73437 of the Government Code is amended to read:

73437. (a) Whenever reference to a numbered salary range of the salary schedule is made in any section of this article, the schedule of salary ranges found in the salary ordinance of the County of Kern in effect on January 1, 1990, shall apply. The employees of the municipal courts shall be paid biweekly pursuant to the payroll procedures in effect in the County of Kern.

(b) The minimum salary for each position shall normally be "step A" for the position. If it is difficult to secure qualified personnel at that step or if a person of unusual qualifications is engaged, the court or the clerk-administrator may hire at any step of the salary range applicable to the position.

(c) Any employee who is promoted or whose position is reclassified from one class position to a higher class position shall be placed in the step level of the higher class salary range which most closely approximates a one-step increase from the former position, except that such increase shall not exceed an amount equivalent to 1.4 steps in the salary schedule. In the event the "A" step of the higher class position is greater than a 1.4-step increase over the salary of the employee in the lower class position, the employee shall be placed at the "A" step in the salary range of the higher class position.

(d) The Board of Supervisors of the County of Kern may adjust the salaries paid to employees of the municipal courts as part of its county employee compensation plan. Such adjustment shall be effective on the same date as the effective date of the action of the board of supervisors to adjust compensation of other county employees. Any adjustment shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

(e) In addition to the compensation provided in this article, the attachés of the municipal court shall receive, and they shall be entitled to, the same vacations, sick leaves, and similar privileges and

benefits as are now or may hereafter be provided for the employees of the County of Kern, including the right to participate in any group, accident, health or life insurance plan adopted by the Board of Supervisors of the County of Kern.

SEC. 33. Section 73483 of the Government Code is amended to read:

73483. The clerk may appoint:

(a) One municipal courtroom clerk.

(b) Two deputy clerks III.

(c) Four deputy clerks II.

(d) Six deputy clerks I.

SEC. 34. Section 73484 of the Government Code is amended to read:

73484. There shall be one marshal who shall receive the biweekly salary specified in range 63.25 as set forth in the biweekly salary schedule contained in Section 73486.

Whenever the salary of a related class, or classes, of San Joaquin County employees is adjusted, the salary of the marshal may be adjusted by a percentage not to exceed the percentage of the adjustment applicable to such related class or classes. Any adjustment shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC. 35. Section 73485 of the Government Code is amended to read:

73485. The marshal may appoint:

(a) Four deputy marshals.

(b) Two clerk-typists II.

SEC. 36. Section 73486 of the Government Code is amended to read:

Whenever a reference is made to a numbered salary range in any section of this article, the schedule of biweekly salaries found in the salary resolution for the County of San Joaquin in effect shall apply.

SEC. 37. Section 73487 of the Government Code is amended to read:

73487. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 73486, except that if the range shown opposite the title of the position includes a fraction, then the person employed in such position shall be paid a salary equal to that shown opposite said fractional range in the salary ordinance of the County of San Joaquin:

Position	Range
(a) Deputy clerk I	47.25
(b) Deputy clerk II	49.25
(c) Deputy clerk III	50.75
(d) Municipal courtroom clerk	53.75
(e) Clerk/Administrator	58.75
(f) Clerk-typist II	47.25
(g) Deputy marshal	57.25

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office or marshal's office may receive an annual increase in salary of one step on his or her assigned range, until the employee reaches the maximum step on the range assigned for his or her position. Thereafter no additional step increase shall be granted.

SEC. 38. Section 73641 of the Government Code is amended to read·

73641 There shall be 10 judges.

SEC. 39. Section 73643 of the Government Code is amended to read:

73643. There shall be one court administrator who shall serve as clerk of the court, and who shall be appointed by the majority of the judges of the court. The biweekly salary of the court administrator shall be within the biweekly rate range ES-13 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "a majority of the judges."

SEC. 40. Section 73644 of the Government Code is amended to read:

73644. The court administrator may appoint the following personnel:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the

court administrator."

(b) One deputy clerk-administrative assistant I, II, or III as the case may be. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(c) Two deputy clerk-division managers III each of whom shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II of the San Diego Judicial District.

(d) Five deputy clerk-division managers I or II, as the case may be A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V of the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(e) Eighteen deputy clerks IV or senior deputy clerks, as the case may be Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the classified service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed five positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(f) Fifty-three deputy clerks III, II, or I, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego At the discretion of the court administrator, appointments to deputy clerk I may be at any step within the salary range.

(g) Four deputy clerk-data entry operators, each of whom shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service of the County of San Diego.

(h) One deputy clerk-administrative secretary IV who shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego.

(i) Three deputy clerk-interpreters who shall receive a biweekly

salary at a rate equal to that specified for deputy clerk III.

(j) One deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk, as the case may be. A deputy clerk-research attorney I shall receive a biweekly salary equal to that specified for a deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary equal to that specified for a deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for a law clerk in the classified service of the County of San Diego.

(k) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for an administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for an administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for an administrative secretary I in the classified service of the County of San Diego.

(*l*) One deputy clerk-assistant, associate, or senior accountant as the case may be A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for the class of assistant accountant in the classified service of the County of San Diego A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for the class of associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for the class of senior accountant in the classified service of the County of San Diego.

(m) One deputy clerk-substance abuse assessor I and one deputy clerk-substance abuse assessor II. Notwithstanding subdivision (b) of Section 73649, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator. The deputy clerk-substance abuse assessor II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of San Diego County. The deputy clerk-substance abuse assessor I shall receive a biweekly salary at a rate 9 percent below that specified for a deputy clerk-substance abuse assessor II. Appointments to deputy clerk-substance abuse assessor I and II may be at any step within the salary range.

Authorization for the class of deputy clerk-substance abuse assessor I and II shall end on February 15, 1990, if the board of supervisors finds there are insufficient funds available to continue these classes and adopts a resolution to that effect before the specified date.

(n) Notwithstanding subdivision (b) of Section 73649, up to 10 extra help positions (hourly rate) to be appointed by and serve at the

pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(o) Notwithstanding subdivision (b) of Section 73649, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73640 to 73650, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(p) Notwithstanding subdivision (b) of Section 73649, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy

clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(q) Two deputy administrative clerks III, II, or I. as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(r) Except as provided in this section, Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73643.

(s) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (*l*), inclusive, (o), (p), and (q) of this section and under Section 73646 may be increased by up to 30 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which it becomes operative, and as of that date is inoperative.

SEC. 41. Section 73649 of the Government Code is amended to read:

73649. (a) In addition to the salary provided in this article, the classes of attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345. The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of chief

probation officer of the County of San Diego. The assistant court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of assistant chief probation officer of the County of San Diego. All persons employed as deputy clerk-division manager I, deputy clerk-division manager II, deputy clerk-division manager III, or deputy clerk-administrative assistant III shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of administrative assistant III in the classified service of the County of San Diego. However, all officers, employees, and attachés of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego. The purpose and intent of this subdivision is to provide all court attachés except judicial secretaries employed, traffic trial commissioners, and court reporters with any and all, but no more than, those fringe benefits which are available to their comparable classes in the service of the County of San Diego as specified in this section or in Section 74345. Whenever action or approval by the chief administrative officer or county personnel director is required for the county benefit, it shall be taken or given, as to municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or, as to those serving at the pleasure of the court, by the majority of the judges of the municipal court or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of and personnel privileges to be afforded the attachés of the court, excluding fringe benefits.

(b) All attachés other than court reporters, judicial secretaries, traffic trial commissioners, and other persons serving at the pleasure of their appointing authorities, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the appointing authority subject in such appointment, promotion, removal, suspension, layoff, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever such attachés are appointed or promoted to a position, they must serve a probationary period of at least six months, and not to exceed 18 months, as specified in the job announcement for the class prior to appointment.

SEC. 42. Section 73649.1 is added to the Government Code, to read:

73649.1. (a) A traffic trial commissioner shall receive a salary equal to 80 percent of the salary of a judge of the municipal court.

(b) A traffic trial commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for a deputy county

counsel IV in the classified service of the County of San Diego. However, a traffic trial commissioner shall be entitled to (a) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period; (b) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period.

(c) With the approval of a majority of judges of the court and the board of supervisors, each traffic trial commissioner may be reimbursed for any payment he or she makes for his or her annual State Bar of California membership fee.

SEC. 43. Section 73705 of the Government Code is amended to read:

73705. The clerk may appoint:

(a) Two chief deputy clerks who shall be administrative officers.

(b) Two deputy clerks III.

(c) Six deputy clerks II.

(d) Nineteen deputy clerks I.

SEC. 44. Section 73706 of the Government Code is amended to read:

73706 There shall be one marshal who shall receive the biweekly salary specified in range 63.25 as set forth in the biweekly salary schedule contained in Section 73709. Whenever the salary of a related class, or classes, of San Joaquin County employees is adjusted, the salary of the marshal may be adjusted by a percentage not to exceed the percentage of the adjustment applicable to such related class or classes. Any adjustment shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC. 45. Section 73708 of the Government Code is amended to read:

73708. The marshal may appoint:

(a) Two senior deputy marshals.

(b) Five deputy marshals.

(c) Two clerk-typists II.

SEC. 46. Section 73710 of the Government Code is amended to read:

73710. Persons employed in any of the positions authorized by this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 73709, except that if the range shown opposite the title of the position includes a fraction then the person employed in such position shall be paid a salary equal to that opposite said fractional range in the salary ordinance of the County of San Joaquin.

Position	Range
(a) Deputy clerk I	47.25
(b) Deputy clerk II	49.25
(c) Deputy clerk III	50.75
(d) Chief deputy clerk	58.75
(e) Clerk	53.75
(f) Clerk-typist II	47.25
(g) Senior deputy marshal	59.50
(h) Deputy marshal	57.25

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office or the marshal's office may receive an annual increase in salary of one step on his or her assigned range, until the employee reaches the maximum step on the range assigned for his or her position. Thereafter, no additional step increase shall be granted.

SEC. 47. Section 73713 of the Government Code is amended to read.

73713. Whenever the salary of a related class, or classes, of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class, or classes, deemed by the board of supervisors to be related·

(a) Deputy clerk I
(b) Deputy clerk II
(c) Deputy clerk III
(d) Chief deputy clerk
(e) Clerk
(f) Clerk-typist II
(g) Senior deputy marshal
(h) Deputy marshal

All adjustments to the salaries of the above-named classes shall be effective as of the same date as the adjustment for the class, or classes, deemed to be related, and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC. 48. Article 12.3 (commencing with Section 73784) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 12.3. Mount San Hedrin Municipal Court District

73784. This article applies to the Mount San Hedrin Municipal Court District.

73785. The presiding judge of the Mount San Hedrin Municipal Court District shall appoint one supervising clerk II who shall receive a monthly salary in the range of one thousand seven hundred twenty-four dollars ($1,724) to two thousand ninety-five dollars

($2,095).

73786. The supervising clerk II may appoint, with the approval of the presiding judge, the following employees each of whom shall receive a monthly salary in the range specified:

Number	Title	Salary Range
2	Supervising Clerk I	$1,499.33–$1,821.73
7	Legal Clerk II	$1,315.60–$1,599.87
7	Legal Clerk I/Clerk II	$1,164.80–$1,416.13
		$1,111.07–$1,350.27

73787. The employees of the Mount San Hedrin Municipal Court District shall be entitled to the same benefits and privileges as are granted to other employees of the County of Mendocino, as provided in the county's salary ordinance and other ordinances, resolutions, and rules applicable to other county employees.

73788. The employees of the Mount San Hedrin Municipal Court District shall be governed by the personnel regulations, memoranda of understanding, management benefit package, and affirmative action plan of the County of Mendocino.

73789. The salaries, benefits, and privileges of the employees of the Mount San Hedrin Municipal Court District may be adjusted, as directed by the board of supervisors, as part of the county employee compensation plan. Any adjustment authorized by this section shall only be effective until January 1 of the second calendar year after the calendar year in which the adjustment occurs, unless ratified by the Legislature.

SEC. 49. Section 73793 of the Government Code is amended to read:

73793. There shall be one administrative officer of the court known as the municipal court clerk-administrator, who shall be appointed by a majority of the judges of the court. The court clerk-administrator shall receive a biweekly salary on range 62.0.

SEC. 50. Section 73796 of the Government Code is amended to read:

73796. There shall be one marshal of the Merced County Municipal Court. The marshal shall receive a salary on range 62.0.

When a vacancy occurs in the office, a majority of the superior and municipal court judges shall appoint the marshal and the marshal shall serve at their pleasure.

SEC. 51. Section 73797 of the Government Code is amended to read:

73797. (a) The marshal may appoint:

(1) One assistant marshal on range 59.8.

(2) One marshal's sergeant on range 56.8.

(3) Twelve deputy marshals II on range 54.0.

(4) Four civil assistants on range 46.3.

(b) The initial appointments to the positions of assistant marshal and deputy marshal shall be made from persons who have served as

constables in a justice court in Merced County during the year of 1976. Such appointees shall become deputy marshals and receive the salary provided at the fifth step of the range designated for deputy marshal. The assistant marshal initially appointed shall receive the salary provided at the fifth step of the range designated for assistant marshal.

SEC. 52. Section 73798 of the Government Code is amended to read:

73798. The clerk-administrator may appoint:

(a) One assistant municipal court administrator on range 55.1.

(b) Four supervising municipal court clerks I on range 50.0.

(c) Nine deputy court clerks II on range 46.3.

(d) Nineteen municipal court clerks I on range 43.8.

(e) One supervising account clerk I on range 46.8.

(f) Three account clerks I on range 43.1.

(g) Two typist-clerks II on range 41.4.

(h) One municipal court services officer on range 51.6.

(i) One typist-clerk III on range 44.4.

(j) One own recognizance release officer on range 48.6.

SEC. 53. Article 13 (commencing with Section 73820) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 13. Nevada County Municipal Court

73820. This article applies to the Nevada County Municipal Court, which supersedes the Grass Valley, Nevada, and Truckee Judicial Districts and embraces the entire County of Nevada.

73821. There shall be three judges.

73822. There is one court administrator for the superior court and the municipal court, who shall be appointed by the board of supervisors with the concurrence of a majority of the judges of the county, and who shall hold office at the judges' pleasure. The court administrator shall receive a monthly salary in the range of two thousand eight hundred seventy dollars and sixty-four cents ($2,870.64)—three thousand four hundred eighty-nine dollars and twenty-nine cents ($3 489.29).

73823. The court administrator may, in accordance with the Nevada County Personnel Rules, appoint the following employees, each of whom shall receive a monthly salary in the range specified:

Position	Salary Range
(a) 2 supervising municipal court assistants —Range 154	$1,601.57–1,946.70
(b) 2 municipal court assistants III's—Range 124	$1,383.49–1,681.65
(c) 11.5 municipal court assistants II's—Range 104	$1,254.86–1,525.30
(d) 3 municipal court assistants I's—Range 74	$1,084.01–1,317.60

73824. Subject to Section 72001, the compensation of officers and attachés shall be governed by Nevada County Personnel Rules, Salary Ordinance, and Memoranda of Understanding with the recognized labor organizations representing court employees.

73825. The officers and attachés of the municipal court shall be entitled to the same vacation, sick leave, and benefits and privileges as are granted to other comparable employees of Nevada County.

73826. Commencing with the effective date of this legislation, the Nevada County Sheriff shall be ex officio marshal and shall act as such without additional compensation. The sheriff's designated employees shall be ex officio marshals of the court.

73827. All matters affecting the employment of officers and attachés of the Nevada County Municipal Court District which are not specifically determined by this article or other provisions of state law shall be governed and regulated by the then current ordinances and resolutions of the Board of Supervisors of Nevada County.

73828. The number, categories, and compensation of the officers, attachés, and employees provided by this article may be adjusted, as the need is determined, by the board of supervisors and in accordance with established county personnel and budgetary procedures Any such adjustment shall be on an interim basis and shall remain effective only until January 1 of the second year following the year in which such adjustment is made. The provisions of this section are not intended to affect the application of Section 72150.

SEC. 54. Section 73951 of the Government Code is amended to read:

73951. There are 11 judges.

SEC. 55. Section 73953 of the Government Code is amended to read:

73953. There shall be one court administrator who shall serve as clerk of the court, who shall be appointed by, and serve at the pleasure of the majority of the judges of the court. The biweekly salary of the court administrator shall be within the biweekly rate range ES-13 indicated in the Compensation Ordinance of the County of San Diego The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "a majority of the judges."

SEC. 56. Section 73954 of the Government Code is amended to read:

73954. The court administrator may appoint:

(a) One assistant court administrator at the direction of a majority of the judges of the court who shall serve at the pleasure of the majority of the judges. The biweekly salary of the assistant court

administrator shall be within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary and any advancement or reduction within the range shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) One deputy-clerk division manager III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy-clerk division managers II.

(c) Five deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V of the San Diego Judicial District.

(d) Twenty-one deputy clerks IV, or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the classified service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed seven positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate of 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(e) Eighty-two deputy clerks III, II, or I, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I class may be at any step within the salary range.

(f) Two deputy clerk-administrative secretaries IV, III, II, or I, as the case may be. A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service in the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II

in the classified service in the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(g) Five deputy clerk interpreters who shall receive a biweekly salary at a rate equal to that specified for deputy clerk III.

(h) One deputy clerk-administrative assistant I, II, or III, as the case may be. The deputy clerk-administrative assistant I, II, or III, shall receive a biweekly salary at a rate equal to that specified for administrative assistant I, II, or III, respectively, in the classified service of the County of San Diego.

(i) Three deputy administrative clerks III, II, or I, as the case may be. Each deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. Each deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. Each deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II. Funding of these positions is dependent upon enactment of an additional resolution by the Board of Supervisors of the County of San Diego.

(j) One deputy clerk-associate or assistant accountant, as the case may be. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service in the County of San Diego. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego.

(k) One deputy clerk-research attorney I or law clerk, as the case may be. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for law clerk in the classified service of the County of San Diego.

(*l*) Notwithstanding subdivision (b) of Section 73957, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(m) Notwithstanding subdivision (b) of Section 73957, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73950 to 73960, inclusive, pending a review and evaluation of the duties of these positions by the court administrator,

and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of such classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(n) Notwithstanding subdivision (b) of Section 73957, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(o) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 73953.

(p) Notwithstanding any other provision of law, the number of

positions in classifications authorized under subdivisions (b) to (k), inclusive, (m), and (n) of this section and under Section 73959 may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which it becomes operative, and as of such date is inoperative.

SEC. 57. Section 73960 of the Government Code is amended to read:

73960. By order entered in the minutes of the court, a majority of judges may appoint one commissioner who shall serve at the pleasure of the judges. The commissioner shall receive a biweekly salary equal to 80 percent of the salary of a judge of a municipal court. The commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the class of deputy county counsel IV in the classified service of the County of San Diego. However, the commissioner shall be entitled to: (a) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period; and (b) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period. With the approval of a majority of judges of the court and the board of supervisors, each commissioner or traffic trial commissioner may be reimbursed for any payment he or she makes for his or her annual State Bar of California membership fee.

SEC. 58 Section 73960.1 is added to the Government Code, to read:

73960.1. The traffic trial commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the class of deputy county counsel IV in the classified service of the County of San Diego. However, the traffic trial commissioner shall be entitled to: (a) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period, and (b) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period. With the approval of a majority of judges of the court and the board of supervisors, the traffic trial

commissioner may be reimbursed for any payment he or she makes for his or her annual State Bar of California membership fee.

SEC. 58.2. Section 74004 of the Government Code is amended to read:

74004. (a) The number of positions within each job classification which may be filled by appointment by the executive officer/clerk, respectively, of each such court, and the number of the salary range set forth in Section 74005 which constitutes the compensation for each job classification, are shown in the table below, in which the various municipal courts are designated by column headings from left to right, in the same order as that in which their judicial districts are named in Section 74000:

Class Code	Title Classification	Salary Range	NOC	COC	WOC	OCH	SOC
0416	Data Entry Tech , MC .	D-37 S/3	15	15	14	11	8
0566	Judicial Sec'y I, MC .	D-40 S/2	1	1	1	1	1
0569	Judicial Sec'y II, MC	D-44	1	1	1	1	1
0439	Secretary II, MC .	D-40	0	0	1	0	0
0442	Secretary III, MC	D-44	1	1	1	1	1
0705	Deputy Clerk I, MC .	D-33 S/5	49	62	46	29	41
0708	Deputy Clerk II, MC	D-35 S/3	22	18	21	30	17
0711	Deputy Clerk III, MC .	D-40	11	9	12	9	6
0712	Judicial Ass't , MC	D-52	1	1	1	1	1
0714	Deputy Clerk IV, MC	D-42	2	2	1	0	0
0718	Supv Deputy Clerk I, MC .	D-43	2	3	2	1	1
0719	Supv Deputy Clerk II, MC	D-46	3	4	3	2	3
0723	Division Head II, MC	D-55	5	5	5	5	5
0745	Courtroom Clerk, MC	D-50	22	24	20	17	11
2381	Municipal Court Judicial Hearing Officer	Flat 46,800	0	2	0	0	0
7509	Detention Release Officer	A-56	0	8	0	0	0
7510	Sr Detention Release Officer	A-58 S/3	0	6	0	0	0
7915	Systems Analyst II	A-55	0	1	0	0	0
7919	Systems Analyst IV MC	A-64	1	1	1	1	1
8449	ASA Municipal Court Marshal .	E-63	0	1	0	0	0
0742	Cert Court Interpreter	A-44	3	0	3	1	1
0703	Appeals Clerk, MC	D-37	0	0	0	0	1
7511	Supv Det Rel Officer	A-62	0	1	0	0	0
8005	Senior Staff Analyst	ML-5	1	1	1	1	1

(b) The Legislature finds and declares that the matter of appointing, promoting, demoting, and dismissing persons in positions with the municipal courts and all other aspects of the

personnel management of municipal courts of Orange County is one for local concern. It further finds and declares that wherever possible such personnel management may grant to persons in positions with the municipal courts similar treatment with persons in positions with the County of Orange who are performing similar duties and who possess similar qualifications.

(c) To achieve the legislative intent expressed in subdivisions (a) and (b), the municipal courts of Orange County may create a personnel committee consisting of five judges selected one from each court by a majority vote of the judges of the respective courts, or where there is an equal division of the judges of a court, by the senior judge of that court. The personnel committee may adopt rules and regulations providing for a personnel system for all municipal courts of Orange County which may provide for similar treatment for employees and attachés of the several courts as is provided for Orange County employees generally. In so providing for a personnel system, the judges may adopt all or any part of the personnel and salary resolution or appropriate memoranda of understanding of the County of Orange.

(d) With the approval of the board of supervisors, the personnel system adopted by the personnel committee and made applicable to all the municipal courts of Orange County may be administered by the County of Orange through its personnel department. The board of supervisors may withdraw its approval at any time.

(e) If an increase in the business of the court or any other emergency requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article or requires the performance of duties of positions in a class not expressly provided in this article, a majority of the judges of any of the courts, with the approval of the board of supervisors, may establish additional titles, pay rates, and positions as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the courts. Rates of compensation of such other officers, attachés, and employees may be set by joint action and approval of the board of supervisors and a majority of the municipal court judges of Orange County. The establishment of additional titles, positions, and pay rates and changes in compensation made pursuant to this subdivision shall be on an interim basis and shall expire on January 1 of the second year following the year in which such establishment or change is made. The provisions of this section are directory only and are not intended to affect the application of Section 72150.

SEC. 58.4. Section 74010 of the Government Code is amended to read:

74010. (a) There shall be one marshal, designated as the Marshal of Orange County, for the superior and municipal courts established in Orange County. The marshal shall serve at the pleasure of a majority of the judges of the superior and municipal courts in the county.

The salary range of the marshal shall be 20 percent higher than the range of captain in the marshal's department, and the marshal's salary shall be determined by the Joint Marshal's Personnel Committee within that range.

(b) The marshal shall possess the rights and powers and perform the duties imposed upon marshals of courts generally and, when so authorized by the board of supervisors pursuant to Section 74007, within Orange County, shall exercise all powers and perform all duties imposed upon sheriffs with respect to proceedings in the superior court.

(c) Whenever a vacancy occurs in the position of Marshal of Orange County, the judges of the superior court and all the municipal courts in Orange County by a majority vote of their aggregate number, shall select and appoint the marshal under such organization, rules, and procedures as they adopt or ratify therefor. Discharge of the marshal shall be by majority vote of the judges of the municipal courts and the superior court.

(d) There shall be one assistant marshal, appointed by and serving at the pleasure of the marshal. This appointment shall require the concurrence of a majority of the members of the Joint Marshal's Personnel Committee. Discharge of the assistant marshal shall be at the direction of the marshal and shall require the concurrence of a majority of the members of the Joint Marshal's Personnel Committee.

(e) The salary range of the assistant marshal shall be 10 percent higher than the range of captain in the marshal's department. The salary of the assistant marshal may be adjusted annually, within its range, by the marshal with concurrence of the Joint Marshal's Personnel Committee.

(f) A branch office of the Marshal of Orange County shall be maintained in each superior and municipal court district facility, except where those facilities are shared, in which case one office may serve the needs of both courts.

SEC 58.6. Section 74011 of the Government Code is amended to read:

74011. (a) The Legislature finds and declares that the matter of appointing, promoting, demoting, and dismissing persons in positions in the marshal's department and all other aspects of the personnel management of the Marshal of Orange County is one of local concern It further finds and declares that wherever possible that personnel management may grant to persons in positions with the marshal's department similar treatment with persons in positions with the County of Orange who are performing similar duties and who possess similar qualifications.

(b) To achieve this legislative intent, the courts of Orange County shall create a personnel committee consisting of five judges, who will comprise the Joint Marshal Personnel Committee. There shall be two judges representing the municipal courts selected by a majority vote of the judges on the Municipal Court Judges Personnel Committee.

There shall be two judges representing the superior court selected by a majority vote of the members of the Superior Court Marshal's Personnel Committee. The fifth member of the committee shall be selected by a majority vote of the aforementioned four members and may be selected from judges of either the municipal or superior court. If the four members cannot agree upon a fifth member, then the fifth member shall be selected by the judges of the superior court and the judges of the municipal courts in Orange County by a majority vote of their aggregate number. The five members shall, by majority vote, select one member to act as the committee's chair. The selection of the members of the Joint Marshal's Personnel Committee shall occur no later than the 31st of January of each year with the term of office to be one year. Vacancies that occur within the term of appointment shall be filled by the original appointing body.

(c) The Joint Marshal Personnel Committee may adopt rules and regulations for a personnel system for employees of the marshal's department. The Joint Marshal's Personnel Committee shall hear all grievances referred to Step 3 of a grievable action. The Joint Marshal's Personnel Committee may adopt all or any part of the personnel and salary resolution or appropriate memoranda of understanding of the County of Orange Except as provided in this section, provisions relating to compensation or benefits shall require the concurrence of the board of supervisors.

(d) The first one year served by a deputy marshal, court services officer, administrative manager, lieutenant or captain appointee, and the first six months served by any other appointee, shall be considered a probationary period, except for appointment to classes of positions serving at the pleasure of the appointing authority. The marshal shall have the power to dismiss without cause, in the case of a new employee, or to demote without cause, in the case of a promoted employee, during that probationary period.

(e) With the approval of the board of supervisors, the personnel system adopted by the Joint Marshal's Personnel Committee may be administered by the County of Orange through its personnel department.

SEC. 58.8. Section 74012 of the Government Code is amended to read:

74012. The marshal may make the following appointments at the designated salary ranges:

Title of Job Classification	Applicable Pay Range Number	Number of Positions Authorized
Marshal	MM4	1
Assistant Marshal	MM3	1
Captain	MM2	3
Lieutenant	MM1	8
Sergeant	P11	20

Marshal's Investigator II	P9 S/3	7
Marshal's Investigator I	P6 S/3	13
Deputy Marshal II	P3	28
Deputy Marshal I	P1	202
Court Services Officer	A42	25
Senior Court Services Officer	A46	4
Administrative Manager I	ML6	1
Systems Analyst IV - Marshal	A64	1
Systems Analyst II - Marshal	A55	1
Secretary III - Marshal	D44	1
Supervising Clerk III - Marshal	D45	1
Supervising Clerk II - Marshal	D42	1
Supervising Clerk I - Marshal	D40	5
Chief Clerk II, Marshal's Department	D46	4
Chief Clerk I, Marshal's Department	D44	1
Information Processing Technician - Marshal	D37 S/3	9
Clerk III, Marshal's Department	D38	3
Clerk II, Marshal's Department	D35 S/3	25
Clerk I, Marshal's Department	D33 S/5	11
Marshal Technician	D38	16
Radio Dispatcher - Marshal	A49	2
Deputy Marshal Trainee	PA S/12	6
Investigation Aide - Marshal	D38	1
Micrographics Techician - Marshal	H4	1
Account Clerk II - Marshal	D35 S/3	1
Office Technician - Marshal	D33 S/5	2

SEC. 58.9. Section 74013 of the Government Code is amended to read.

74013. (a) It is the intent of the county to maintain parity in salary and benefits between those employees in the marshal's department and employees in the same or comparable classes for other departments. When the salary of a class in the service of Orange County is adjusted by the board of supervisors, the salary of the equivalent class in the marshal's department shall be adjusted in the same amount and at the same time. Salaries for classes not considered equivalent shall be adjusted based on internal relationships and other criteria customarily used in setting salaries in other county classes. In the event that a system of merit pay increases is established by the County of Orange for employees, merit increases, if justified, may be authorized by the Joint Marshal's Personnel Committee for employees with similar qualifications and experience in equivalent classifications. Designation of certain classes as equivalent positions shall be as follows, except that their designation as equivalent positions may be changed or deleted at any

time following a classification study and an agreement between the county and the Joint Marshal's Personnel Committee.

Marshal Classification	County Classification
Management	
Captain, Marshal's Department	Captain
Lieutenant, Marshal's Department	Lieutenant
Safety Members	
Sergeant, Marshal's Department	Sergeant
Marshal's Investigator II	Investigator
Marshal's Investigator I	Investigator (less two salary ranges)
Deputy Marshal II	Deputy Sheriff II
Deputy Marshal I	Deputy Sheriff I
Deputy Marshal Trainee	Deputy Sheriff Trainee
General Classes	
Systems Analyst IV - Marshal	Systems Analyst IV
Systems Analyst II - Marshal	Systems Analyst II
Court Services Officer	Sheriff's Special Officer I
Radio Dispatcher - Marshal	Radio Dispatcher
Clerical Classes	
Secretary III - Marshal	Secretary III
Supervising Clerk III - Marshal	Supervising Clerk III
Supervising Clerk II - Marshal	Supervising Clerk II
Supervising Clerk I - Marshal	Supervising Clerk I
Clerk II, Marshal's Department	Account Clerk II
Clerk I, Marshal's Department	Office Technician
Information Processing Technician - Marshal	Information Processing Technician

Positions in these classes within the marshal's department shall not be paid less salary than positions in equivalent county classifications.

(b) If an increase in the business of the court or any other business necessity requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article, or requires the performance of duties of positions in a class not expressly provided

in this article, the Joint Marshal's Personnel Committee, with the approval of the board of supervisors, may establish additional titles, pay rates, and positions as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the court. Rates of compensation of these officers, attachés, and employees may be set by joint action and approval of the board of supervisors and the Joint Marshal's Personnel Committee. The establishment of additional titles, positions, and pay rates and changes in compensation pursuant to this subdivision shall be effective only until January 1 of the second year following the year in which the establishment or change is made. This section shall not affect the appointment of additional deputy marshals pursuant to Section 72150.

SEC. 59. Section 74021 of the Government Code is amended to read:

74021. There shall be three judges and one commissioner. The salary of the commissioner shall be 75 percent of that of a municipal court judge. The court shall provide circuit judge services to all branch courts established by the board of supervisors. The frequency and extent of such services shall be dependent upon the needs of the community and shall lie within the sound discretion of the court.

SEC. 60. Section 74192 of the Government Code is amended to read:

74192. (a) There shall be one administrator who shall be appointed by the judges of the court and who shall be clerk of the court. The administrator shall receive a biweekly salary at a rate specified in range 2442. The position of administrator shall not be deemed a civil service position. The administrator shall be the appointing authority for the positions set forth in this section. Each person appointed shall serve at the pleasure of the administrator.

(b) There shall be three assistant clerk/administrators. The assistant clerk/administrators for the court shall receive a biweekly salary at a rate specified in range 1954. The positions of assistant clerk/administrator for the court shall not be deemed a civil service position.

(c) There shall be one director of administrative services. The director of administrative services for the court shall receive a biweekly salary at a rate specified in range 1954. The position of director of administrative services shall not be deemed a civil service position.

(d) There shall be four court process managers. Each court process manager for the court shall receive a salary at a rate specified in range 1425. The positions of court process manager for the court shall not be deemed civil service positions.

(e) There shall be one system manager coordinator. The system manager coordinator shall receive a biweekly salary at a rate specified in range 1711. The position of system manager coordinator shall not be deemed a civil service position.

(f) There shall be two court interpreters. The court interpreters

shall receive a biweekly salary at a rate specified in range 1035. The positions of court interpreter shall not be deemed a civil service positions.

(g) There shall be one senior court interpreter. The senior court interpreter shall receive a biweekly salary at a rate specified in range 1092. The position of senior court interpreter shall not be deemed a civil service position.

(h) There shall be 14 court process supervisors. The court process supervisors shall receive a biweekly salary at a rate specified in range 1080. The position of the court process supervisor for the court shall not be deemed a civil service position.

(i) There shall be one attorney IV. The attorney IV for the court shall receive a biweekly salary at a rate specified in range 2485. The position of attorney IV shall not be deemed a civil service position.

(j) There shall be one administrative services officer I. The administrative services officer I for the court shall receive a biweekly salary at a rate specified in range 1333. The position of administrative services officer I shall not be deemed a civil service position.

(k) There shall be one associate administrative analyst II . The associate administrative analyst II shall receive a biweekly salary at a rate specified in range 1608. The position of associate administrative analyst II shall not be deemed a civil service position.

(*l*) There shall be one accountant IV. The accountant IV shall receive a biweekly salary at a rate specified in range 1696. The position of accountant IV shall not be deemed a civil service position.

(m) There shall be one court process supervisor, confidential. The court process supervisor, confidential, shall receive a biweekly salary at a rate specified in range 1199. The position of court process supervisor, confidential, shall not be deemed a civil service position.

(n) There shall be one accountant II. The accountant II shall receive a biweekly salary at a rate specified in range 1333. The position of accountant II shall not be deemed a civil service position.

(o) There shall be one departmental systems analyst/programmer. The departmental systems analyst/programmer shall receive a biweekly salary at a rate specified in range 1777. The position of departmental systems analyst/programmer shall not be deemed a civil service position.

(p) There shall be one accounting technician. The accounting technician shall receive a biweekly salary at a rate specified in range 1133. The position of accounting technician shall not be deemed a civil service position.

(q) There shall be one department secretary. The department secretary shall receive a biweekly salary at a rate specified in range 1183. The position of department secretary shall not be deemed a civil service position.

(r) There shall be two supervising municipal courtroom clerks. The supervising municipal courtroom clerks shall receive a biweekly salary at a rate specified in range 1414. The position of supervising municipal courtroom clerk shall not be deemed a civil service

position.

(s) There shall be eight pretrial release interviewers. The pretrial release interviewers shall receive a biweekly salary at a rate specified in range 981. The position of pretrial release interviewer shall not be deemed a civil service position.

SEC. 61. Section 74193 of the Government Code is amended to read:

74193. The administrator shall appoint:

(a) One hundred thirty-one deputy clerks, who shall be associate court process clerks, each of whom shall receive a biweekly salary at a rate specified in range 836 for level II.

(b) Fifteen deputy clerks, who shall be senior court process clerks, each of whom shall receive a biweekly salary at a rate specified in range 938.

(b) One half-time deputy clerk, who shall be an associate court process clerk and shall receive a biweekly salary at a rate specified in range 836 for level II.

(c) Twenty-five deputy clerks, who shall be courtroom clerks, each of whom shall receive a biweekly salary at a rate specified in range 1197 for level II and in range 1067 for level I.

(d) Four deputy clerks who shall be court process specialists, each of whom shall receive a biweekly salary at a rate specified in range 989A.

(e) Two deputy clerks, who shall be departmental data-processing technicians II, each of whom shall receive a biweekly salary at a rate specified in range 1031.

(f) Eight deputy clerks, who shall be account clerks I/II, each of whom shall receive a biweekly salary at a rate specified in range 915.

(g) Two deputy clerks, who shall be account clerks III, each of whom shall receive a biweekly salary at a rate specified in range 989.

(h) Two deputy clerks, who shall be legal secretaries II, each of whom shall receive a biweekly salary at a rate specified in range 989.

(i) One part-time deputy clerk, who shall be a senior court process clerk and shall receive a biweekly salary at a part-time rate specified in range 938.

(j) One deputy clerk, who shall be a senior personnel clerk, who shall receive a biweekly salary at a rate specified in range 973.

SEC. 62. Section 74201 of the Government Code is amended to read:

74201. There shall be one pretrial release program manager. The appointing authority for the position shall be the judges of the Sacramento Municipal Court. The position shall not be deemed to be a civil service position and the incumbent shall serve at the pleasure of the judges of the Sacramento Municipal Court. The salary range for the position shall be 1695.

SEC. 63. Section 74207 of the Government Code is amended to read:

74207. There shall be one clerk/administrator who shall be appointed by the judge of the court and who shall be clerk of the

court. The clerk/administrator shall receive a biweekly salary at a rate specified in range 1425 except for the person occupying the position on January 1, 1987, who is Y rated in range 1684. The position of clerk/administrator shall not be deemed to be a civil service position.

SEC. 64. Section 74208 of the Government Code is amended to read:

74208. There shall be the following positions for which the appointing authority shall be the clerk/administrator:

(a) Three court process specialists who shall receive a biweekly salary at a rate specified in range 989A.

(b) One senior court process clerk who shall receive a biweekly salary at a rate specified in range 938.

(c) Two associate court process clerks II who shall receive a biweekly salary at a rate specified in range 836.

(d) One municipal courtroom clerk II who shall receive a biweekly salary at a rate specified in range 1197.

SEC. 65. Section 74341 of the Government Code is amended to read:

74341. There are 28 judges.

SEC. 66. Section 74343 of the Government Code is amended to read:

74343. There shall be one court administrator who shall serve as clerk of the court. Notwithstanding the provisions of Section 74348, the court administrator shall be appointed by and serve at the pleasure of the majority of the judges. The biweekly salary of the court administrator shall be within the biweekly rate range ES-15 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "a majority of the judges."

SEC. 67. Section 74344 of the Government Code is amended to read:

74344. The court administrator may appoint:

(a) One assistant court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the court administrator in the event that the court administrator is absent or unavailable for any reason and who shall receive a biweekly salary within the biweekly rate range ES-12 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345,

except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) One deputy court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the assistant court administrator in the event that the assistant court administrator is absent or unavailable for any reason and who shall receive a salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the Chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(c) Four deputy clerk-division managers III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II. One of these positions may be designated as branch manager. When a position is designated branch manager, the incumbent shall receive a bonus of 10 percent.

(d) Five deputy clerk-division managers II who shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V.

(e) Eight deputy clerks V each of whom shall receive a biweekly salary at a rate 32.6 percent higher than that specified for deputy clerk III.

(f) Fifty-two deputy clerks IV, or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerks in the classified service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed 17 positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(g) One deputy clerk-data entry supervisor who shall receive a biweekly salary at a rate equal to that specified for data entry supervisor in the classified service of the County of San Diego. Each vacancy occurring in this class shall cause a corresponding reduction in the number of deputy clerk-data entry supervisors authorized; provided, however, that each of such vacancies shall increase by one, the number of positions designated as deputy clerk III.

(h) One hundred eighty-six deputy clerks III, II, or I, as the case may be. Each deputy clerk III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive

a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each deputy clerk I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. Appointments to deputy clerk I may be at any step within the salary range at the discretion of the court administrator.

(i) One deputy clerk-assistant, associate or senior accountant, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(j) Eight deputy clerk interpreters, each of whom shall receive a biweekly salary at a rate equal to that specified for deputy clerk III.

(k) One deputy clerk-interpreter coordinator who shall receive a biweekly salary at a rate equal to that specified for deputy clerk V. Appointments to deputy clerk-interpreter coordinator may be at any step within the salary range at the discretion of the court administrator.

(*l*) One deputy clerk-administrative secretary IV who shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego.

(m) One deputy clerk-administrative secretary III, II, or I, as the case may be. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk-administrative secretary I shall receive a biweekly salary at a rate equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(n) One deputy clerk-administrative assistant II, I, or trainee as the case may be. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego A deputy clerk-administrative assistant trainee shall receive a biweekly salary at a rate equal to that specified for administrative assistant trainee in the classified service of the County of San Diego.

(o) One deputy clerk-principal administrative analyst. Notwithstanding subdivision (b) of Section 74348, persons appointed

to this position on or after January 1, 1990, shall serve at the pleasure of the court administrator. A deputy clerk-principal administrative analyst shall receive a biweekly salary at a rate equal to that specified for the class of principal administrative analyst in the classified service of the County of San Diego.

(p) One deputy clerk-DP systems manager who shall receive a biweekly salary at a rate equal to that specified for the class of EDP systems manager in the classified service of the County of San Diego.

(q) One deputy clerk-EDP coordinator who shall receive a biweekly salary at a rate equal to that specified for a departmental EDP coordinator in the classified service of the County of San Diego.

(r) Six deputy clerk-senior systems analysts, associate systems analysts, assistant systems analysts, or systems analyst trainees, as the case may be. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(s) The positions identified in subdivisions (p), (q), and (r) except for one position in subdivision (r) shall be administered by the court administrator of the San Diego Judicial District subject to policy direction by the court administrators of the San Diego, North County, El Cajon, and South Bay Judicial Districts. The purpose and intent of this subdivision is to allow all four municipal court judicial districts to determine the work assignments of data-processing personnel.

(t) One deputy clerk-print shop helper, offset equipment operator, or publication supervisor, as the case may be. A deputy clerk-print shop helper shall receive a biweekly salary at a rate equal to that specified for print shop helper in the classified service of the County of San Diego. A deputy clerk-offset equipment operator shall receive a biweekly salary at a rate equal to that specified for offset equipment operator in the classified service of the County of San Diego A deputy clerk-publication supervisor shall receive a biweekly salary at a rate equal to that specified for publications supervisor in the classified service of the County of San Diego.

(u) Three deputy clerk-research attorneys I or research attorneys II, as the case may be. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney

II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego.

(v) Notwithstanding subdivision (b) of Section 74348, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Section 74345 pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the designated range at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(w) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help deputy clerk-junior clerk positions (hourly rate) at the junior clerk-typist level, to be appointed by and serve at the pleasure of the court administrator. These appointments shall be temporary for a period not to exceed six months, plus one additional period at the court administrator's option, not to exceed six months.

(x) Notwithstanding subdivision (b) of Section 74348, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these

positions with persons employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(y) Notwithstanding subdivision (b) of Section 74348, the court administrator may appoint up to 30 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(z) Two deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(aa) Two deputy clerk-analysts I, II, or III, as the case may be. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1990, shall serve at the pleasure of the court administrator A deputy clerk-analyst I, II, or III, shall receive a biweekly salary at a rate equal to that specified for analyst I, II, or III, respectively, in the classified service of the County of San Diego.

(bb) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (c) to (w), inclusive, (y), (z) and (aa) of this section and under Section 74352 may be increased by up to 136 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to the positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting such positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the

second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which it becomes operative, and as of such date is inoperative.

SEC. 68. Section 74345 of the Government Code is amended to read:

74345. (a) All matters affecting the employment and compensation (including salary and fringe benefits) of municipal court officers and attachés not specifically provided for in this article or other provisions of state law shall be governed by the then-current ordinances and resolutions of the Board of Supervisors of the County of San Diego in the same manner as those employment and compensation provisions may now or hereafter affect employees of the County of San Diego in the comparable classes specified in this section or in Sections 73649, 73957, 74348, and 74749 if other comparable classes are specified in those sections. Whenever in the ordinances or resolutions action or approval is required to be taken or given by the chief administrative officer or the county personnel director, it shall be taken or given, as to municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges or their designees, or as to persons serving at the pleasure of the court, by the majority of the judges of the municipal court, or their designees.

(b) The hereinafter specified court classes are deemed to be comparable in job level to the specified comparable classes in the service of the County of San Diego. Whenever the salaries of such classes in the service of the County of San Diego are adjusted by the board of supervisors, the salaries of the comparable classes in the office of the court administrator shall be adjusted a commensurate amount effective on the same date. In no event shall the salary of the clerk or any deputy clerk who occupied his or her position on the day prior to the effective date of this section be less than his or her salary on that day. Any person whose title is changed as a result of the enactment of or of any amendments to this article shall receive credit for continued service which he or she would be entitled under his or her previous position and shall receive compensation at the step covering such length of service. Thereafter, any increments earned by additional service in grade shall take effect upon the first day of the pay period following completion of such required service. The comparable classes are as follows.

Municipal Court Class	County Class
Deputy clerk-division manager III	Legal procedures clerk III
Deputy clerk-division manager II	Legal procedures clerk III
Deputy clerk-division manager I	Legal procedures clerk III
Deputy clerk I	Legal procedures clerk I
Deputy clerk II	Legal procedures clerk II
Deputy clerk III	Legal procedures clerk III
Deputy clerk IV	Legal procedures clerk III
Deputy clerk V	Legal procedures clerk III
Deputy clerk-administrative clerk I, II, and III	Legal procedures clerk III
Deputy clerk-data entry supervisor	Data entry supervisor
Deputy clerk-data entry operator	Data entry operator
Deputy clerk interpreter	Legal procedures clerk III
Deputy clerk-interpreter coordinator	Legal procedures clerk III
Deputy clerk-administrative secretary III	Administrative secretary III
Deputy clerk-administrative secretary II	Administrative secretary II
Deputy clerk-administrative secretary I	Administrative secretary I
Deputy clerk-administrative secretary IV	Administrative secretary IV
Deputy clerk-administrative assistant III	Administrative assistant III
Deputy clerk-administrative assistant II	Administrative assistant II
Deputy clerk-administrative assistant I	Administrative assistant I
Deputy clerk-administrative assistant trainee	Administrative assistant trainee
Deputy clerk-senior systems analyst	Senior systems analyst
Deputy clerk-associate systems analyst	Associate systems analyst
Deputy clerk-assistant systems analyst	Assistant systems analyst
Deputy clerk-systems analyst trainee	Systems analyst trainee
Deputy clerk-senior accountant	Senior accountant
Deputy clerk-associate accountant	Associate accountant
Deputy clerk-assistant accountant	Assistant accountant
Deputy clerk-junior clerk	Junior clerk-typist
Deputy clerk-law clerk	Law clerk

Deputy clerk-research attorney I	Deputy county counsel I
Deputy clerk-research attorney II	Deputy county counsel II
Deputy clerk-EDP coordinator	Departmental EDP coordinator
Deputy clerk-print shop helper	Print shop helper
Deputy clerk-publication supervisor	Publication supervisor
Deputy clerk-offset equipment operator	Offset equipment operator
Deputy clerk-DP systems manager	DP systems manager
Deputy clerk-administrative services manager I	Administrative services manager I
Deputy clerk-administrative services manager II	Administrative services manager II
Deputy clerk-administrative services manager III	Administrative services manager III
Senior deputy clerk	Legal procedures clerk III
Deputy clerk-principal administrative analyst	Principal administrative analyst
Deputy clerk-analyst I	Analyst I
Deputy clerk-analyst II	Analyst II
Deputy clerk-analyst III	Analyst III
Deputy clerk-substance abuse assessor I	Deputy probation officer
Deputy clerk-substance abuse assessor II	Deputy probation officer

Notwithstanding the comparable classes set forth above, if pursuant to subdivision (f) of Section 73644, subdivision (e) of Section 74344, subdivision (d) of Section 73954, and subdivision (g) of Section 74745, the class of deputy clerk IV is entitled to receive a biweekly salary at a rate equal to that specified for superior court clerks in the classified service of the County of San Diego, the comparable county class for deputy clerk IV and senior deputy clerk shall be the superior court clerk in the classified service of the County of San Diego, except with respect to benefits in which case the comparable county class shall be legal procedures clerk III.

(c) Persons employed on and after January 1, 1975, in a class eligible for advancement in range shall receive the same step increases applicable to persons so employed in the County of San Diego on or after July 1, 1974. Persons employed prior to January 1, 1975, in a class eligible for advancement in range shall receive the same step increases applicable to persons so employed in the County of San Diego prior to July 1, 1974.

(d) Officers and attachés may be appointed to a class and position in the service of a court in one judicial district from the service of a court in another judicial district within the County of San Diego, from the service of the County of San Diego, from the service of the Superior Court of San Diego County, or from the service of the

marshal, in the same manner that employees of the County of San Diego may be appointed in departments of the county. In determining the step of the salary range at which such employee shall be paid, the employee shall be given credit for the immediately preceding continuous prior service to a court, the marshal, or the County of San Diego.

(e) A promotion is an appointment to a class compensated at a higher base salary, at any like-numbered step, than the class relinquished. Upon promotion an employee shall be placed at the lowest step which provides at least a 5-percent increase over the base salary of the step occupied in the former class, but in no event higher than the top step of the class to which promoted.

(f) A demotion is an appointment to a class compensated at a lower base salary, at any like-numbered step, than the class relinquished. The demoted employee's step shall be set at the same numbered step for the demoted class as for the former class, except that the step shall not be set lower than the normal entry step. If the demotion is to the class in which the employee served immediately prior to being promoted, the employee's step shall be that held immediately prior to the promotion.

SEC. 69. Section 74346 of the Government Code is amended to read:

74346. (a) The traffic referee shall receive a salary equal to 65 percent of the salary of a judge of the municipal court. He or she shall, after each year of service, receive an increase of 5 percent of the salary of a judge of the municipal court but in no event shall he or she receive more than 70 percent of the salary of a judge of the municipal court.

(b) There shall be five commissioners who shall hold office at the pleasure of the judges. A commissioner shall receive a salary equal to 80 percent of the salary of a judge of the municipal court.

(c) The traffic trial commissioner shall receive a salary equal to 80 percent of the salary of a judge of the municipal court.

(d) A commissioner, traffic trial commissioner, or traffic referee shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for a deputy county counsel IV in the classified service of the County of San Diego. However, a commissioner, traffic trial commissioner, or traffic referee shall be entitled to (a) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period; and (b) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period.

(e) With the approval of a majority of the judges of the court and the board of supervisors, each traffic referee, commissioner, and traffic trial commissioner may be reimbursed for any payment he or she makes for his or her annual State Bar of California membership fee.

SEC. 70. Section 74348 of the Government Code is amended to read:

74348. (a) In addition to the salary provided in this article, the classes of attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345. The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of chief probation officer of the County of San Diego. The assistant court administrator and deputy court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of assistant chief probation officer of the County of San Diego. All persons employed as deputy clerk-division managers I, II, or III, shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of administrative assistant III of the classified service of the County of San Diego. However, all officers, employees, and attachés of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego The purpose and intent of this subdivision is to provide all court attachés except judicial secretaries, commissioners, traffic trial commissioners, court reporters, and the traffic referee with any and all fringe benefits, but no more than those which are available to their comparable classes in the service of the County of San Diego as specified in this section or in Section 74345. Whenever action or approval by the chief administrative officer or the county personnel director is required for the county benefit, it shall be taken or given, as to comparable municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or as to the court administrator and others serving at the pleasure of the court, by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of and personnel privileges to be afforded the attachés of the court, excluding fringe benefits.

(b) All attachés other than the traffic referee, commissioners, traffic trial commissioners, the court administrator, court reporters, judicial secretaries, and other persons serving at the pleasure of their appointing authorities, may be appointed, promoted, removed, suspended, laid off, or discharged for cause by the appointing authority subject in such appointment, promotion, removal, suspension, layoff, or discharge to civil service provisions applicable to the classified personnel of the County of San Diego. Whenever such attachés are appointed or promoted to a position, they must serve a probationary period of at least six months, and not to exceed 18 months, as specified in the job announcement for the class prior

to appointment.

SEC. 71. Section 74351 of the Government Code is amended to read:

74351. In the County of San Diego, the courts shall establish administrative assessments not to exceed ten dollars ($10) for clerical and administrative costs incurred for the following activities:

(a) An assessment for the cost of recording and maintaining a record of the defendant's prior convictions for violations of the Vehicle Code. The assessment shall be payable at the time of payment of a fine or when bail is forfeited for any subsequent violations of the Vehicle Code other than parking, pedestrian, or bicycle violations.

(b) An assessment for all defendants whose driver's license or automobile registration is attached or restricted pursuant to Section 40509 or 40509.5 of the Vehicle Code, to cover the cost of notifying the Department of Motor Vehicles of the attachment or restriction.

SEC. 72. Section 74642 of the Government Code is amended to read:

74642. Within the Santa Barbara Judicial District there shall be the following officers, attachés, and employees:

	Santa Barbara Municipal Court	Salary Range
2	Account Clerks II	340
1	Account Clerk III	367
1	Assistant Clerk-Administrative Officer—SB	475
1	Accounting Technician I	386
1	Administrative Secretary	382
1	Clerk-Administrative Officer—SB	539
15	Court Clerks I	335
13	Court Clerks II	362
10	Court Clerks III	389
5	Court Clerks, Senior	399
1	Court Interpreter	389
1	Calendar Coordinator, Municipal Court	425
1	Data Entry Operator II	340
1	Management Specialist	582
3	Official Court Reporters—Municipal Court	488
2	Own Recognizance Officers	440
1	Own Recognizance Supervisor	460
2	Commissioners, Municipal Court	2,517

Marshal Santa Barbara Municipal Court		Salary Range
3	Court Clerks I	335
1	Court Clerk II	362
1	Clerk Principal	397
7	Deputy Marshals	448
1	Marshal—SB	523
2	Marshal's Sergeants	483

SEC. 73. 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	340
1	Account Clerk III	367
1	Assistant Clerk-Administrative Officer—SM	441
1	Clerk-Administrative Officer—SM	498
6	Court Clerks I	335
5	Court Clerks II	362
4	Court Clerks III	389
3	Court Clerks, Senior	399
1	Court Interpreter	389
3	Data Entry Operators II	340
1	Data Entry Operator III	354
1	Management Specialist	398
1	Own Recognizance Officer	440
1	Own Recognizance Supervisor	460
1	Clerk Typist III	357
1	Commissioner, Municipal Court	2,517

Marshal—Santa Maria Municipal Court		Salary Range
1	Account Clerk II	340
1	Account Clerk III	367
1	Assistant Marshal—SM	488
1	Court Clerk I	335
5	Deputy Marshals	448
1	Marshal—SM	513
1	Marshal's Sergeant	483
1	Legal Service Specialist	382

SEC. 74. 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	425
1	Clerk Administrative Officer—Lompoc	476
3	Court Clerks I	335
3	Court Clerks II	362
1	Court Clerk III	389

Marshal—Lompoc Municipal Court		Salary Range
1	Administrative Services Clerk	382
1	Deputy Marshal	448
1	Marshal—Lompoc	500
1	Clerk-Typist I/II—D	306/330

SEC. 75. 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, 1989, 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. 76. 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, 1991, unless ratified by statute by the Legislature prior to that date. In criminal cases such fees upon order of the court shall be a charge against the general fund of the county.

(e) An official reporter when not engaged in the performance of duties of the municipal court, may be appointed to serve as such reporter for the Santa Barbara County Grand Jury or in any other court in the County of Santa Barbara.

SEC. 77. Section 74663 of the Government Code is amended to read:

74663. In the Santa Clara County Judicial District there shall be one clerk-administrative officer who shall receive a salary of two thousand six hundred eighty-four dollars and fifty-six cents ($2,684.56) biweekly and shall, notwithstanding the provisions of Section 74666, be appointed by and serve at the pleasure of a majority of the judges of the municipal court. In addition, there will be one legal aide (unclassified) who shall serve a one-year term. The legal aide shall be appointed by and serve at the pleasure of a majority of the judges and shall receive a salary as specified in range 42.5B of the Santa Clara County Salary Ordinance No. NS-5.88, as amended, for the fiscal year July 1, 1988, through June 30, 1989.

The clerk-administrative officer may appoint all of the following:

(1) One assistant clerk-administrative officer who shall receive a salary of two thousand two hundred sixty-three dollars and fifty-two cents ($2,263.52) biweekly.

(2) One administrative assistant to the clerk-administrative officer who shall receive a salary as specified in range 35.4A.

(3) One administrative assistant to the presiding judge who shall receive a salary as specified in range 34.4A.

(4) One administrative services manager II who shall receive a salary as specified in range 36.6A.

(5) One department information systems coordinator who shall receive a salary as specified in range 34.6A.

(6) One management analyst who shall receive a salary as specified in range 32.1A, or associate management analyst B who shall receive a salary as specified in range 28.6A, or associate management analyst A who shall receive a salary as specified in range 24.6A.

(7) One accountant III who shall receive a salary as specified in range 32.1A, or accountant II who shall receive a salary as specified in range 46.4B, or accountant/auditor appraiser who shall receive a salary as specified in range 42.7B.

(8) One accountant II who shall receive a salary as specified in range 46.4B, or accountant/auditor appraiser who shall receive a salary as specified in range 42.7B.

(9) One office management coordinator who shall receive a salary as specified in range 25.6A.

(10) One secretary III who shall receive a salary as specified in range 43.4B, or secretary II who shall receive a salary as specified in range 41.4B, or secretary I who shall receive a salary as specified in range 38.4B.

(11) One secretary II who shall receive a salary as specified in range 41.4B, or secretary I who shall receive a salary as specified in range 38.4B.

(12) One secretary I who shall receive a salary as specified in range 38.4B.

(13) One municipal court division manager III who shall receive a salary of one thousand nine hundred seventy-four dollars and forty cents ($1,974.40) biweekly.

(14) Three municipal court division managers II who shall receive a salary of one thousand eight hundred sixteen dollars and forty-eight cents ($1,816.48) biweekly.

(15) Three municipal court division managers I who shall receive a salary of one thousand seven hundred four dollars and sixty-four cents ($1,704.64) biweekly.

(16) One chief deputy court clerk II who shall receive a salary as specified in range 32.2A.

(17) Six chief deputy court clerks I who shall receive a salary as specified in range 31.2A.

(18) Nine supervising deputy court clerks II who shall receive a salary as specified in range 29.2A.

(19) Three supervising deputy court clerks I who shall receive a salary as specified in range 26.2A.

(20) Ten assistant supervising deputy court clerks who shall receive a salary as specified in range 23.3A.

(21) Fifty municipal courtroom clerks who shall receive a salary as specified in range 44.1B.

(22) One hundred eighty-one deputy court clerks II who shall receive a salary as specified in range 38.4B, or deputy court clerk I who shall receive a salary as specified in range 35.9B.

(23) One coordinating interpreter who shall receive a salary as specified in range _____.

(24) One interpreter who shall receive a salary as specified in range _____

(25) Seven accountant assistants who shall receive a salary as specified in range 40.1B.

(26) One senior data entry operator who shall receive a salary as specified in range 39.2B.

(27) Eleven data entry operators who shall receive a salary as specified in range 37.5B.

(28) One security guard who shall receive a salary as specified in range 37.5B.

(29) One messenger-driver who shall receive a salary as specified in range 34.7B.

SEC. 78. Section 74665 of the Government Code is amended to read:

74665. In the Santa Clara County Judicial District the judges of these courts, pursuant to Section 72194, may appoint as many additional reporters as the business of the courts may require, who shall be known as official reporters pro tempore, and who shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in said sections for reporting testimony and proceedings, the official reporters pro tempore shall in all cases receive eighty-eight dollars and sixty-one cents ($88.61) per half day and one hundred seventy-seven dollars and sixty-one cents ($177.61) per day, which shall, upon order of the court, be a charge against the general fund of the county. If the board of supervisors increases the per diem fees for official court reporters pro tempore in the superior court pursuant to Section 70046.1, this increase shall apply equally for all official reporters pro tempore in the municipal courts, but all of these increases shall be effective only until the second year following the calendar year in which the adjustment is made.

SEC. 79 Section 74705 of the Government Code is amended to read:

74705. Certain classes of employment in the municipal courts are deemed to be equivalent in job responsibility and salary level to certain classes in the service of the County of Sonoma, or in some instances, to such classes plus or minus a specified percentage rate. Whenever the salary of those classes in the service of the County of Sonoma is adjusted by the board of supervisors, the salary of the comparable classes in the municipal courts shall be adjusted to a like extent plus or minus the percentage rate specified in this section, if applicable. Such adjustment shall become effective on the same date as the effective date of the action by the board of supervisors, as it applies to the classes in the service of the county, but such adjustment shall remain effective only until January 1 of the second year following the calendar year in which such adjustment is made.

Municipal court classification	County classification
Clerk administrator	Clerk administrator
Assistant clerk administrator	Assistant clerk administrator
Administrative assistant	Administrative assistant
Municipal court services supervisor	Municipal court services supervisor
Municipal court secretary	Municipal court secretary
Executive secretary	Executive secretary
Municipal court division supervisor	Deputy county clerk III
Municipal courtroom clerk	Superior court clerk
Municipal court clerk III	Deputy county clerk II

Account clerk II/I	Account clerk II/I
Municipal court clerk II	Clerk typist III
Municipal court clerk I	Clerk typist II
Clerk typist II/I	Clerk typist II/I

SEC. 80. Section 74708 of the Government Code is amended to read:

74708. In the municipal court in the district which coincides with all the territory in the County of Sonoma, there shall be the following personnel:

(a) There shall be six judges who may together appoint:

(1) Two court commissioners.

(2) One clerk administrator.

(3) Two municipal court secretaries.

(b) The clerk administrator may appoint:

(1) One assistant clerk administrator.

(2) One administrative assistant.

(3) One municipal court services supervisor.

(4) One executive secretary.

(5) Eight municipal court division supervisors.

(6) Nine municipal courtroom clerks.

(7) Sixteen municipal court clerks III.

(8) Five account clerks II/I.

(9) Two data entry operators II/I.

(10) Twenty-six and one-half municipal court clerks II/I.

(11) Three clerk typists II/I.

SEC. 81. Section 74743 of the Government Code is amended to read:

74743. (a) By order entered in the minutes of the court, a majority of judges may appoint a commissioner who shall serve at the pleasure of the judges and shall receive a salary equal to 80 percent of the salary of a judge of the municipal court.

(b) A commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for a deputy county counsel IV in the classified service of the County of San Diego. However, a commissioner shall be entitled to (a) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period; and (b) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period.

(c) With the approval of a majority of the judges of the court and the board of supervisors, the commissioner may be reimbursed for any payment he or she makes for his or her annual State Bar of California membership fee.

SEC. 82. Section 74744 of the Government Code is amended to read:

74744. There shall be one court administrator who shall serve as clerk of the court and who shall be appointed by a majority of the judges of the court. The salary of the court administrator shall be

within the biweekly rate range ES-13 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "a majority of the judges."

SEC. 83. Section 74745 of the Government Code is amended to read:

74745. The court administrator may appoint with the approval of the judges:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) One deputy clerk-administrative services manager I, II, or III, as the case may be. A deputy clerk-administrative services manager I shall receive a biweekly salary at a rate equal to that specified for administrative services manager I in the classified service of the County of San Diego. A deputy clerk-administrative services manager II shall receive a biweekly salary at a rate equal to that specified for administrative services manager II in the classified service of the County of San Diego. A deputy clerk-administrative services manager III shall receive a biweekly salary at a rate equal to that specified for administrative services manager III in the classified service of the County of San Diego.

(c) One deputy clerk-administrative assistant I, II, or III as the case may be A deputy clerk-administrative assistant I shall receive a biweekly salary at a rate equal to that specified for administrative assistant I in the classified service of the County of San Diego. A deputy clerk-administrative assistant II shall receive a biweekly salary at a rate equal to that specified for administrative assistant II in the classified service of the County of San Diego. A deputy clerk-administrative assistant III shall receive a biweekly salary at a rate equal to that specified for administrative assistant III in the classified service of the County of San Diego.

(d) One deputy clerk-division manager III who shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II in the South Bay Judicial District.

(e) Three deputy clerk-division managers I or II, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V in the San Diego Judicial District.

(f) One deputy clerk-assistant, associate, or senior accountant, as the case may be. A deputy clerk-assistant accountant shall receive a biweekly salary at a rate equal to that specified for assistant accountant in the classified service of the County of San Diego. A deputy clerk-associate accountant shall receive a biweekly salary at a rate equal to that specified for associate accountant in the classified service of the County of San Diego. A deputy clerk-senior accountant shall receive a biweekly salary at a rate equal to that specified for senior accountant in the classified service of the County of San Diego.

(g) Eleven deputy clerks IV, or senior deputy clerks, as the case may be. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the classified service of the County of San Diego or 19 95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed three positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities.

(h) Thirty-seven deputy clerks III, II, or I, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I classification may be at any step within the salary range.

(i) Three deputy clerk-data entry operators, each of whom shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service of the County of San Diego.

(j) Two deputy clerk-administrative secretaries IV, III, II, or I, as the case may be A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. A deputy clerk-administrative secretary III shall receive a biweekly salary at a rate equal to that specified for administrative secretary III in the classified service of the County of San Diego. A deputy clerk-administrative secretary II shall receive a biweekly salary at a rate equal to that specified for administrative secretary II in the classified service of the County of San Diego. A deputy clerk administrative secretary I shall receive a biweekly salary at a rate

equal to that specified for administrative secretary I in the classified service of the County of San Diego.

(k) Four deputy clerk-interpreters who shall receive a biweekly salary at a rate equal to that specified for deputy clerk III.

(*l*) Notwithstanding subdivision (b) of Section 74749, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 74740 to 74750, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class shall be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors

(m) Notwithstanding subdivision (b) of Section 74749, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 90 working days or 720 hours, whichever is greater, during a fiscal year on a part-time basis.

(n) Notwithstanding subdivision (c) of Section 74749, the court

administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, or III, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(o) Except as provided herein, the provisions of Section 74345 shall apply to the attachés appointed pursuant to this section and Section 74744.

(p) Two deputy administrative clerks III, II, or I, as the case may be. A deputy administrative clerk III shall receive a biweekly salary at a rate 19.95 percent higher than that specified for deputy administrative clerk II. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(q) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivision (b) to (*l*), inclusive, (n) and (p) of this section may be increased by up to 20 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which this subdivision becomes operative, and as of such date is inoperative.

SEC. 84. Section 74782.1 of the Government Code is amended to read:

74782.1. A majority of the municipal court judges may appoint one commissioner who shall possess the same qualifications as the law

requires of a judge of a municipal court. The duties of the commissioner shall be as prescribed by law. The commissioner shall receive 80 percent of the salary of a judge of the municipal court and shall not engage in the private practice of law. The commissioner shall be entitled to all employee benefits that are provided for or made applicable to the other employees of the court.

SEC. 85. Section 74783 of the Government Code is amended to read:

74783. There shall be one clerk-administrator who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The clerk-administrator and all other court employees shall receive the salary specified in the salary resolution for Stanislaus County which is in effect. The clerk may appoint, with the approval of the judges of the court, all of the following:

(a) One assistant clerk-administrator.
(b) Eleven courtroom clerks.
(c) Five senior legal clerks.
(d) One accounting technician.
(e) Six legal clerk III's.
(f) One account clerk III.
(g) One department head secretary.
(h) Forty-one legal clerk I/II's.
(i) One supervising courtroom clerk.
(j) One supervising legal clerk.
(k) Three interpreters on range: certified interpreters $50 per half-day and $100 per full-day; noncertified $37.50 per half-day and $75 per full-day.

SEC. 86. Section 74784 of the Government Code is amended to read:

74784. There shall be one marshal who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The Marshal and all other marshal employees shall receive the salary specified in the salary resolution for Stanislaus County which is in effect. The marshal may appoint, with the approval of the judges of the court all of the following:

(a) Two marshal-captains.
(b) Fourteen deputy marshals.
(c) One supervising civil process technician.
(d) One civil process technician.
(e) Three civil process clerks.

SEC. 87. Section 74785 of the Government Code is amended to read:

74785. Official reporters in the municipal court appointed pursuant to Section 72194 shall be attachés of the court and, in lieu of any other compensation provided by law for their services in reporting testimony in criminal proceedings in the court, shall receive a salary specified in the salary resolution for Stanislaus County which is in effect.

SEC. 88. Section 74791 is added to the Government Code, to read:

74791. In the event the Board of Supervisors of the County of Stanislaus amends the resolution establishing salary ranges and salary rates for the personnel of the County of Stanislaus or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court employees under this article on the effective date of the action of the board of supervisors, or the effective date of this section, whichever is earlier.

SEC. 89. Section 74803 of the Government Code is amended to read:

74803. The clerk may appoint:

(a) Three municipal court coordinators.

(b) One calendar coordinator.

(c) Thirteen municipal courtroom clerks.

(d) Four deputy clerks III.

(e) Two judicial secretaries.

(f) Ten deputy clerks II.

(g) Thirty-seven deputy clerks I.

(h) Two directors of court operations.

(i) One clerk typist III.

SEC 90. Section 74804 of the Government Code is amended to read:

74804. There shall be one marshal who shall receive the biweekly salary specified in range 62.75 as set forth in the biweekly salary schedule contained in Section 74806.

Whenever the salary of a related class, or classes, of San Joaquin County employees is adjusted, the salary of the marshal may be adjusted by a percentage not to exceed the percentage of the adjustment applicable to such related class or classes. Any adjustment shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC 91. Section 74805 of the Government Code is amended to read.

74805. The marshal may appoint:

(a) One senior deputy marshal.

(b) Fourteen deputy marshals.

(c) Twenty deputies who shall be custodians at a fee allowed by law for the keeping of property.

(d) One specialist clerk.

SEC. 92. Section 74806 of the Government Code is amended to read:

74806. Whenever a reference is made to a numbered salary range in any section of this article, the schedule of biweekly salaries found in the salary resolution for the County of San Joaquin in effect shall apply.

SEC. 93. Section 74807 of the Government Code is amended to read:

74807. Persons employed in any of the positions authorized by

this article shall be paid the salary assigned to the following ranges as set forth in the biweekly salary schedule contained in Section 74806, except that if the range shown opposite the title of the position includes a fraction then the person employed in such position shall be paid a salary equal to that shown opposite said fractional range in the salary ordinance of the County of San Joaquin.

Position	Range
(a) Deputy clerk I	47.25
(b) Deputy clerk II	49.25
(c) Deputy clerk III	50.75
(d) Judicial secretary	51.50
(e) Municipal courtroom clerk	53.75
(f) Municipal court coordinator	54.00
(g) Clerk/Administrator	66.75
(h) Deputy marshal	57.25
(i) Senior deputy marshal	59.150
(j) Calendar coordinator	54.00
(k) Clerk typist III	49.50
(*l*) Court project director	63.75
(m) Director of court operations	55.00

Subject to the provisions of the salary ordinance of the County of San Joaquin, each person employed in the clerk's office or the marshal's office may receive an annual increase in salary of one step on his or her assigned range until the employee reaches the maximum step on the range assigned for his or her position. Thereafter no additional step increase shall be granted.

SEC. 94. Section 74808 of the Government Code is amended to read:

74808. Whenever the salary of a related class, or classes, of San Joaquin County employees is adjusted, the salary of the following classes may be adjusted by a percentage not to exceed the percentage of adjustment granted to the class, or classes, deemed by the board of supervisors to be related:

(a) Deputy clerk I.
(b) Deputy clerk II.
(c) Deputy clerk III.
(d) Judicial secretary.
(e) Municipal Courtroom Clerks.
(f) Clerk/Administrator.
(g) Calendar coordinator.
(h) Municipal court coordinator.
(i) Deputy marshal.
(j) Senior deputy marshal.
(k) Clerk typist III.
(*l*) Director of court operations.
(m) Court project director.

All adjustments to the salaries of the above-named classes shall be

effective as of the same date as the adjustment for the class, or classes, deemed to be related, and shall be effective only until January 1 of the second year following the year in which the adjustment is made, unless ratified by the Legislature.

SEC. 95. Section 74935.6 is added to the Government Code, to read:

74935.6. Official reporters of the Butte County Municipal Court shall be appointed by the judges of each municipal court district pursuant to Section 72194 and shall serve at the pleasure of the judges.

SEC. 96. Section 74935.7 is added to the Government Code, to read:

74935.7. Pursuant to Section 72194, the judges of each municipal court district may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro-tempore. They shall serve without salary but shall receive the fees provided by Sections 69947 to 69953.

SEC. 97. Section 74936 of the Government Code is amended to read:

74936. There shall be one clerk/administrator in each judicial district who shall be appointed by the judges of the judicial district.

SEC. 98. Section 74937 of the Government Code is amended to read:

74937. The clerk/administrator of the North Butte County Municipal Court may appoint the following positions:

(a) One assistant clerk/administrator or supervisor court clerk.

(b) Three supervising court clerks.

(c) Nine court clerks II/III, or typists clerks III.

(d) Four court clerks I/II, or typist clerks I/II.

(e) One senior account clerk or account clerk.

The clerk/administrator of the South Butte County Municipal Court may appoint the following positions:

(a) One assistant clerk/administrator or one supervising court clerk.

(b) Two supervising court clerks, or court clerks II/III, or typist clerks III.

(c) Three court clerks II/III, or typist clerks III.

(d) Six court clerks I/II, or typist clerks I/II.

(e) One senior account clerk, or account clerk.

SEC. 99. Section 74940 of the Government Code is amended to read:

74940. Whenever reference is made to a range number in this section of this article, the schedule of biweekly salaries shall be that as set forth in the Butte County Salary Ordinance.

(a) Clerk/administrator—range 49.

(b) Assistant clerk/administrator—range 35.

(c) Supervising court clerk—range 30.

(d) Court clerk I—range 18.

(e) Court clerk II—range 22.

(f) Court clerk III—range 26.
(g) Typist clerk III—range 21.
(h) Typist clerk II—range 17.
(i) Typist clerk I—range 13.
(j) Senior account clerk—range 23.
(k) Account clerk—range 19.

SEC. 100. Section 74949.1 of the Government Code is amended to read:

74949.1. (a) The judges of the Napa Municipal Court may appoint one full-time or part-time commissioner who shall hold office at the pleasure of the judges making the appointment, and shall possess the same qualifications as are required of the judge of a municipal court. Within the jurisdiction of the court, and to the extent the judges so direct, the commissioner shall exercise the same powers and duties as a judge of the municipal court with respect to any infraction or small claims action, and shall exercise all other powers and perform all other duties of a municipal court commissioner that may be prescribed by law. In addition, and notwithstanding the provisions of Section 72400, the commissioner shall act as a traffic referee and shall have the powers and duties specified in Article 9 (commencing with Section 72400) of Chapter 8.

(b) The commissioner shall receive a monthly salary at a rate equal to 78 percent of the salary of a municipal court judge. In addition to the monthly salary, the commissioner shall be entitled to and shall receive fringe benefits on the same basis as any employee of the municipal court, other than the clerk of the municipal court, who works an equivalent number of hours. The commissioner shall observe the same holidays as other court employees. If the appointment of the commissioner is on a part-time basis, any salary and fringe benefits to which the commissioner may be entitled shall be prorated on the basis of a 40-hour workweek.

A full-time commissioner shall not engage in the private practice of the law. Notwithstanding any other provision of law, a part-time commissioner shall be entitled to engage in the private practice of the law so long as the commissioner does not practice law before any court of the municipal court district to which he or she is appointed.

(c) The court shall periodically review the performance of any part-time commissioner and shall maintain an ongoing training program to maintain his or her skills. The part-time commissioner shall have completed, prior to his or her appointment, an orientation program satisfactory to the presiding judge, including a review of the procedures and practices of the court, together with observation of each calendar to which the commissioner may be assigned. Each part-time commissioner shall serve on the bench an average of at least three days in each month, and the presiding judge shall ensure that the part-time commissioner maintains current knowledge of the court's personnel and procedures.

(d) If the part-time commissioner regularly serves on the bench

less than three days each week, before any action or proceeding is tried or heard by a part-time court commissioner, any party to, or any attorney appearing in, the action or proceeding shall, be entitled to require, by oral or written motion without notice, that the action or proceeding be reassigned or transferred, whereupon the action or proceeding shall be reassigned or transferred as promptly as possible to a judge, court commissioner, or referee of the court. The court shall, prior to the commencement of any such trial or hearing provide notice to each party or attorney of record in the action or proceeding of this entitlement to require reassignment or transfer.

SEC. 101. Section 74952 of the Government Code is amended to read:

74952. (a) No provision is made for a marshal or deputy marshals in the Municipal Court for the County of Napa and no compensation is established for any such marshal and deputy marshal positions. In lieu thereof, the Sheriff of the County of Napa shall be ex officio marshal and his designated deputies shall be ex officio deputy marshals of the court. All fees collected by the sheriff or his deputies for services rendered as an ex officio marshal of the court shall be deposited in the county treasury.

SEC. 102. Section 74954 of the Government Code is amended to read:

74954. (a) Whenever a reference is made to a numbered salary range according to the standard salary schedule in any section of this article, the schedule found in the Napa County Table and Index of Classes in effect on April 5, 1989, shall apply.

(b) In the event the Board of Supervisors of the County of Napa amends the resolution establishing salary ranges and monthly salary rates on the standard salary schedule for the County of Napa, effective on the date of this act, or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court employees under this article on the effective date of the action of the board of supervisors and shall remain effective only until January 1 of the second year following the year in which such change is made.

SEC. 103. Section 74954.5 of the Government Code is amended to read:

74954.5. (a) Whenever a reference is made to a numbered salary range according to the management and nonclassified personnel salary schedule in any section of this article, the schedule found in the Napa County Table and Index of Classes in effect on April 5, 1989, shall apply.

(b) In the event the Board of Supervisors of the County of Napa amends the resolution establishing salary ranges and monthly salary rates for the management and nonclassified personnel of the County of Napa, or adopts a new resolution which provides for a change in compensation for ranges or steps, such changes shall be effective for the municipal court management and nonclassified personnel under this article on the effective date of the action of the board of

supervisors and shall remain effective only until January 1 of the second year following the year in which such change is made.

SEC. 104. Section 74955 of the Government Code is amended to read:

74955. There shall be one clerk who shall be appointed by, and who shall serve at the pleasure of, a majority of the judges of the municipal court. The clerk shall be paid a biweekly salary at the rate specified in salary range No. D155 in the salary schedule for management and nonclassified personnel. In addition to any other duties imposed by law, the clerk shall, at the direction of the presiding judge, perform any or all of the following duties:

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

(b) To prepare and administer the budget of the court.

(c) To coordinate with other appropriate county agencies the acquisition, utilization, maintenance, and disposition of county facilities, equipment, and supplies necessary for the operation of the court.

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

(e) To serve as liaison for the court with other persons, committees, boards, groups, and associations as directed by the presiding judge.

SEC. 105. Section 74956 of the Government Code is amended to read.

74956. (a) There shall also be the following court employee positions, whose numbers and salary range on the standard salary schedule of the County of Napa shall be as specified:

Position title	Number of positions	Salary range
Assistant clerk of the court	1	D-048
Supervising legal clerk	2	B-064
Municipal court clerk	3	A-140
Municipal court clerk (LT)	1	A-140
Legal clerk II	9	A-105
Legal clerk II (LT)	1	A-105
Legal clerk interpreter—B	1	A-129
Legal clerk I	3	A-092
Senior account clerk	1	A-129
Account clerk I (LT)	1	A-089
Office assistant II	2	A-087
Office Assistant II (LT)	1	A-087

(b) Each such person employed on the effective date of this article in the office of the clerk of the municipal court shall receive credit for prior continuous service in the office, including service in

a court superseded upon establishment of the municipal court.

(c) With the approval of the board of supervisors, a majority of the municipal court judges may establish additional officer, attaché, and employee positions in addition to those provided by subdivision (a). The order and approval establishing any such position shall designate the position title and salary range. Such appointments shall be on an interim basis and shall expire January 1 of the second year following the calendar year in which such appointments are made unless ratified by the Legislature.

SEC. 106. Section 74964 is added to the Government Code, to read:

74964. By majority vote, the municipal court judges of Yolo County may appoint a court commissioner who shall meet the qualifications and have the powers and duties specified in Sections 72190, 72190.1, and 72190.2 of this code, and Section 259 of the Code of Civil Procedure. The appointment may only be made in lieu of appointing a traffic referee pursuant to Section 72400.

The commissioner shall be paid biweekly, pursuant to the payroll procedures in effect in the County of Yolo, in an amount equal to 75 to 85 percent of a municipal court judge's salary. The court shall recommend to the board of supervisors the level of salary to be received by the commissioner based on qualifications, performance, and other factors deemed relevant by the court, and the board of supervisors shall determine the salary level within the specified range.

SEC. 107. The heading of Article 40 (commencing with Section 74980) of Chapter 10 of Title 8 of the Government Code is amended to read:

Article 40. Shasta County Judicial District

SEC. 108. Section 74980 of the Government Code is amended to read:

74980. This article applies to the municipal court established in the Shasta County Judicial District.

SEC. 109. Section 74981 of the Government Code is amended to read:

74981. There shall be four judges of the Shasta County Municipal Court.

SEC. 110. Section 74982 of the Government Code is amended to read:

74982. (a) If the Shasta County Board of Supervisors finds that there are sufficient funds available in the municipal court budget for the employment of a commissioner, the board by ordinance or resolution may establish the position of commissioner of the Shasta County Municipal Court.

(b) The commissioner shall be appointed by and serve at the pleasure of the court. A full-time commissioner shall receive an annual salary equal to 75 percent of the annual salary of a municipal

court judge. The commissioner shall be provided the same employment benefits by Shasta County as the county provides to other county management employees in the county's merit personnel system. A part-time commissioner shall receive salary and employment benefits prorated on the basis of a 40-hour work week consistent with county policy regarding regular part-time employment.

(c) The commissioner shall perform those duties and exercise those powers conferred by law and assigned to the commissioner by the court.

(d) A full-time commissioner shall not engage in the private practice of law. Notwithstanding any other provision of law, a part-time commissioner, with approval of the court, may engage in the private practice of law before any court except the Shasta County Municipal Court.

(e) The court shall periodically review the performance of any part-time commissioner and shall maintain an ongoing training program to maintain the commissioner's skills. The part-time commissioner shall have completed, prior to appointment, an orientation program satisfactory to the presiding judge, including a review of the procedures and practices of the court, together with observation of each calendar to which the commissioner may be assigned. Each part-time commissioner shall serve on the bench an average of at least three days in each month, and the presiding judge shall ensure that the part-time commissioner maintains current knowledge of the court's personnel and procedures.

SEC. 111. Section 74984 of the Government Code is amended to read:

74984. (a) There shall be one marshal who shall be appointed by the court; provided, that upon the effective date of this section, the incumbent elected marshal shall continue in office as marshal and may be removed by the court only for cause. When that marshal leaves office, the succeeding marshals shall be appointed by and serve at the pleasure of the court.

(b) The marshal shall receive the salary of three thousand six hundred fifty-three dollars ($3,653) per month as set forth in the standard salary resolution of Shasta County in effect on January 1, 1990. The marshal shall be provided the same employment benefits by Shasta County as the county provides to other county employees in an equivalent category in the county's merit personnel system.

(c) The board of supervisors may transfer certain duties of the sheriff to the marshal pursuant to Section 26608.3.

(d) All fees collected by the marshal's office shall be deposited with the county treasurer and credited to the general fund.

SEC. 112. Section 74985 of the Government Code is amended to read:

74985. (a) The marshal, with the approval of the court, may appoint the following marshal's office employees whose numbers, classifications, and salary ranges in the standard salary resolution of

Shasta County in effect on January 1, 1990, are:

Position Title	Number of Positions	Salary Range
Marshal's Sergeant	2	38.2
Deputy Marshals	8	35.7—Regular $1,818 per mo. —Probationary $1,731 per mo. —Trainee
Senior Account Clerk	1	29.5
Account Clerk I, II	1	25.0–27.0
Typist Clerk III	1	27.7
Typist Clerk I, II	1	23.9–25.4
Typist Clerk I, II, ¾ time	1	23.9–25.4

(b) Each employee of the marshal's office shall be provided the same employment benefits by Shasta County as the county provides to other county employees in equivalent categories and salary ranges in the county's merit personnel system.

(c) With the consent of the court, not more than five reserve deputy marshals may be hired by the marshal on an extra help basis and as the business of the court requires. Reserve deputy marshals may receive as their sole compensation the base salary of a regular Deputy Marshal, calculated on an hourly basis, for each hour or fraction of an hour of service. Reserve deputy marshals shall not be entitled to any employment benefit provided by Shasta County to any other county officer or employee.

SEC. 113. Section 74986 of the Government Code is amended to read:

74986. (a) The municipal court may appoint a municipal court administrator who shall be the chief administrative officer and ex officio clerk of the court. The administrator shall serve at the pleasure of the court and shall receive a salary of three thousand five hundred eighty-three dollars ($3,583) per month as set forth in the standard salary resolution of Shasta County in effect on January 1, 1990. The administrator shall be provided the same employment benefits by Shasta County as the county provides to other county employees in an equivalent category in the county's merit personnel system.

(b) The municipal court shall prescribe and regulate the duties and authority of the administrator.

SEC. 114. Section 74987 of the Government Code is amended to read:

74987. (a) The municipal court administrator, with the approval of the court, may appoint the court's support staff personnel. The following employees of the court shall be compensated within the following applicable ranges established by the standard salary

resolution of Shasta County in effect on January 1, 1990:

Position Title	Number of Positions	Salary Range
Court Administrator	1	$3,583—mo.
Legal Secretary	1	31.2
Supervising Municipal Court Clerk	1	32.1
Supervising Branch Court Clerks	2	31.1
Deputy Court Clerk III	7	30.1
Deputy Court Clerk I, II	19	27.1–29.1
Deputy Court Clerk I, II, ½ time	2	27.1–29.1

(b) Each employee designated in subdivision (a) shall be provided the same employment benefits by Shasta County as the county provides to other county employees in equivalent categories and salary ranges in the county's merit personnel system.

SEC. 115. Section 74989 of the Government Code is amended to read:

74989. The number, categories, and compensation of the officers, attachés, and employees provided by this article may be adjusted, as the need is determined, by the board of supervisors and in accordance with established county personnel and budgetary procedures. Any such adjustment shall be on an interim basis and shall expire 90 days after the adjournment of the next regular session of the Legislature. Nothing in this section precludes a majority of the judges from exercising powers in accordance with Sections 72150 and 72151.

SEC. 116. Section 74990 of the Government Code is repealed.

SEC. 117. Section 74992 of the Government Code is repealed.

SEC. 118. 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1139

An act to amend Section 1176 of the Insurance Code, relating to insurers.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 1176 of the Insurance Code is amended to read:

1176. Domestic incorporated insurers may invest in notes or bonds secured by a mortgage or other first lien upon unencumbered real property meeting the criteria of subdivision (e), if the secured obligation meets the conditions of subdivisions (a) and (b), as follows:

(a) There exists no condition or right of reentry or of forfeiture under which the lien can be cut off, subordinated, or otherwise disturbed.

(b) The secured obligation satisfies the conditions of paragraph (1), (2), (3), or (4), as follows:

(1) The principal so loaned or the entire note or bond issue so secured, plus the amount of the liens of any public bond, assessment, or tax assessed upon the property loaned upon, does not exceed 80 percent of the market value of that real property, together with improvements which are taken as security at the date of investment.

(2) Where the loan is insured by an admitted mortgage guaranty insurer conforming to the provisions of Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2, the unguaranteed portion of the loan, plus the amount of the liens of any public bond, assessment, or tax assessed upon the property loaned upon, does not exceed 80 percent of the market value of that real property, together with improvements which are taken as security at the date of investment.

(3) Where the loan is made or the notes or bonds are issued for a building loan on real property, the principal so loaned, or the entire outstanding notes or bonds so issued, plus the amount of the lien of any public bond, assessment, or tax assessed upon the property loaned upon, at no time exceeds 80 percent of the market value of the real property together with the actual cost of the improvements thereon taken as security.

(4) Where the loan is secured by a first mortgage or other first lien upon real property primarily improved with a residential building, or buildings, which for the purposes of this paragraph includes a condominium unit, designed for occupancy by not more than four families, the terms of the loan provide for monthly payments of principal and interest sufficient to effect full repayment of the loan within the remaining useful life of the building as estimated in the

appraisal for the loan, or 40 years, whichever is less, and the principal so loaned or the entire note or bond issue so secured, plus the amount of the liens of any public bond, assessment, or tax assessed upon the property loaned, does not exceed 90 percent of the market value of that real property, or of that real property together with improvements which are taken as security on the date of investment.

(c) Real property is not encumbered within the meaning of this section if subject only to one or more of the following:

(1) The lien of taxes and assessments not delinquent at the time of investment.

(2) The lien for delinquent taxes or assessments delinquent at the time of investment, which are being contested by any legal proceedings, if indemnity has been given pursuant to the indenture under which the bonds and notes are issued, or otherwise, for the payment of any amount which may be found to be due upon the final adjudication of that contest.

(3) The lien of taxes and assessments becoming delinquent subsequent to the time of investment.

(4) Outstanding mineral, oil or timber rights.

(5) Easements or rights-of-way.

(6) Sewer rights.

(7) Rights in walls.

(8) Building restrictions or other restrictive covenants, or conditions or regulations of use, or leases under which rents or profits are reserved to the owner.

(d) For the purposes of this section, delinquent taxes funded on any deferred payment plan shall be deemed delinquent.

(e) Only real property meeting the following criteria of paragraph (1), (2), or (3) may secure notes or bonds eligible for investment under this section:

(1) There is an improvement on the real property with a value that is substantial in relation to the total value of the property .

(2) There is no improvement on the real property, but the funds loaned on account of the secured obligation, which meets the criteria of paragraph (3) of subdivision (b), are used to construct an improvement on real property and the value of the improvement constructed on the real property is at all times substantial in relation to the amount of the construction loan funds advanced by the insurer and drawn down by or on account of the borrower.

(3) There is no improvement on the real property, but the property is revenue producing and is used primarily as agricultural, horticultural, farm, or ranch property.

(4) There is no improvement on the real property, but the note or bond secured by that real property is held in conjunction with another note or bond held by the insurer that is secured by other real property on which there exists a substantial improvement. However, the value of the unimproved real property may not exceed 20 percent of the total value of all real property taken as security for all those notes or bonds.

CHAPTER 1140

An act to amend Sections 65582 and 65583 of the Government Code, to amend Sections 33080.4, 33334.3, 33334.6, 33413, 51005, 52080, and 52097.5 of, and to add Section 33334.4 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 65582 of the Government Code is amended to read:

65582. As used in this article:

(a) "Community," "locality," "local government," or "jurisdiction" means a city, city and county, or county.

(b) "Department" means the Department of Housing and Community Development.

(c) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.

(d) "Low- and moderate-income households" means persons and families of low or moderate incomes as defined by Section 50093 of the Health and Safety Code.

SEC. 2. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1) Analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) Analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development,

including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) Analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures.

(5) Analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) Analysis of any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) Analysis of opportunities for energy conservation with respect to residential development.

(b) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, improvement, and development of housing.

It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the identified existing housing needs, but should establish the maximum number of housing units that can be constructed, rehabilitated, and conserved over a five-year time frame.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a Low and Moderate Income Housing Fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing, mobilehomes, emergency shelters and transitional housing in order to meet the

community's housing goals as identified in subdivision (b).

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing.

(4) Conserve and improve the condition of the existing affordable housing stock.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color.

The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

SEC. 2.5. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1) Analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) Analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) Analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures.

(5) Analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) Analysis of any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) Analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project by project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing

authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the identified existing housing needs, but should establish the maximum number of housing units that can be constructed, rehabilitated, and conserved over a five-year time frame.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a Low and Moderate Income Housing Fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including rental housing, factory-built housing, mobilehomes, emergency shelters and transitional housing in order to meet the community's housing goals as identified in subdivision (b).

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing.

(4) Conserve and improve the condition of the existing affordable housing stock.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing

developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by January 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between January 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SEC. 3. *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 and any repayments or other income to the agency for loans, advances, or grants, of any kind, from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(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 Section 33334.13:

(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. The definitions of "lower income households" and "very low income households" in Sections 50079.5 and 50105 shall apply to this section. "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 3.5 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 and any repayments or other income to the agency for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve 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, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation 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 Section 33334.13:

(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. The definitions of "lower income households" and "very low income households" in Sections 50079.5 and 50105 shall apply to this section "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

(g) "Increasing, improving, and preserving the community's supply of low- and moderate-income housing," as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to low- and moderate-income households, including very low income households, for a specified period of time, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require the units remain affordable to persons and families of low- and moderate-income and very low income households for the longest feasible time. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (1) the replacement units in another location 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 (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

SEC 4. Section 33334.4 is added to the Health and Safety Code, to read:

33334.4. The Legislature finds and declares that is shall be the policy of each agency to expend, over the duration of the redevelopment plan, the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of low and very low income in at least the same proportion as the total number of housing units needed for those income groups which are not being provided by other governmental programs bears to the total number of units needed for persons of moderate, low and very low income within the community.

SEC. 5. 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 (1) 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 the 1985–86 fiscal year or any subsequent 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 a deficit 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. 6 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, which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, 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 within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost to the same income level of very low income households, lower-income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units.

(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, for the longest feasible time, as determined by the agency, 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.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 6.5. 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 which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, 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 within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost to the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displace from those destroyed or removed units.

(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, for the longest feasible time, as determined by the agency, 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.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration.

SEC. 7. Section 33080.4 of the Health and Safety Code, as amended by Section 3 of Chapter 1604 of the Statutes of 1988, 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 family and elderly 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 family and elderly 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 and the date of adoption of a replacement housing plan for each project area subject to Section 33413.5.

(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, specifying the number of those units which are not subject to Section 33413.

(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 elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly, and by persons and families of low or moderate income and very low income households, respectively, specifying those units which are not currently so occupied, those units which have replaced units destroyed or removed pursuant to subdivision (a) of Section 33413, and the length of time any agency-assisted units are required to

remain available at affordable costs.

(e) The total numbers of new or rehabilitated units subject to paragraph (2) of subdivision (b) of Section 33413, including separate subtotals of the number originally affordable to and currently occupied by, elderly persons and families, but only if the units are restricted by agreement or ordinance for occupancy by the elderly, and by persons and families of low or moderate income and very low income households, respectively, and the length of time these units are required to remain available at affordable costs.

(f) 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 persons and families of low or moderate income, respectively. If the Low and Moderate Income Housing Fund is used to subsidize the cost of onsite or offsite improvements, then the description of the agency's activities shall include the number of housing units affordable to persons and families of low or moderate income which have been directly benefited by the onsite or offsite improvements.

(g) A compilation of the annual reports obtained by the agency under Section 33418 including identification of the number of units occupied by persons and families of low or moderate income, lower income households, and very low income households, respectively, as those terms are defined in Division 31 (commencing with Section 50000), and identification of projects in violation of law or any agreements in relation to affordable units.

(h) 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.

"Elderly," as used in this section, has the same meaning as specified in Section 50067.

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. 8. Section 33080.4 of the Health and Safety Code, as added by Section 3.5 of Chapter 1111 of the Statutes of 1987, is amended 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. 9. 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, the Legislative Analyst, 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, (13) the revenue bonding authority plan adopted pursuant to Section 51004.5, (14) the statistical and other information required to be provided pursuant to Section 50156 (15) an analysis of the agency's compliance with the targeting requirements of subsection (d) of Section 142 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 142) with respect to any issue of bonds subject to those requirements under Section 103 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 103), including the numbers of rental units subject to this reporting requirement by categories based on the number of bedrooms per unit and (16) the statistical and other information relating to congregate housing for the elderly pursuant to Section 51218.

The agency may, at its option, include the information required by this section in a single document or may separately report the statistical portion of the information in a supplement appended to its annual report. This statistical supplement shall be distributed with copies of the agency's annual report, but need not be provided to bond rating agencies, underwriters, investors, developers, or financial institutions

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. 10. Section 52080 of the Health and Safety Code is amended to read:

52080. (a) (1) 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 issue, shall at all times during the qualified project period meet the requirement of subparagraph (A) or (B), whichever is elected by the issuer at the time of issuance of the issue for each development:

(A) Twenty percent or more of the residential units in the development shall be occupied by individuals whose income is 50 percent or less of area median income.

(B) Forty percent or more of the residential units in the development shall be occupied by individuals whose income is 60 percent or less of area median income.

As used in this subdivision, "qualified project period," "income," and "area median income" shall have the meanings specified in, and shall be determined in accordance with the provisions of, subsection (d) of Section 142 of the Internal Revenue Code of 1986, as amended, and United States Treasury regulations and rulings promulgated pursuant thereto.

With respect to a development for which the issuer has elected to meet the requirement of subparagraph (A), the rental payments paid by the occupants of the units meeting the requirement of subparagraph (A) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency

to those occupants or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income. With respect to a development for which the issuer has elected to meet the requirement of subparagraph (B), the rental payments paid by the occupants of the units meeting the requirement of subparagraph (B) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 60 percent of median income.

(2) The governing body shall ensure that 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 including, but not limited to, 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 governing body. The governing body 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 governing body 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 more burdensome than the criteria applied to all other prospective tenants.

(4) It is the intent of the Legislature that the governing body 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 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 cities and counties finance multifamily rental developments with substantially less costly design requirements than those required by the governing body prior to January 1, 1986.

(5) It is the intent of the Legislature that the governing body 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 city or county 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. 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 city or county as grantee.

(c) The governing body 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 city or county shall give priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees or other local fees for multifamily rental 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 city or county, based on efficiency of design or the elimination of improvements that are not required by applicable building standards.

(2) The city or county shall give equal priority to processing construction loans and mortgage loans or may take other steps such as reducing loan fees or other local 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.

(C) Are sponsored by a nonprofit housing organization.

(D) Provide a significant number of housing units, as determined by the city or county, as part of a coordinated jobs and housing plan adopted by the city or county.

(E) Exceeds the ratios specified in subparagraph (A) or (B) of paragraph (1) of subdivision (a) or restricts the occupancy for these units for the longest period beyond the required minimum number of years.

(e) (1) New and existing rental housing developments may be syndicated after prior written approval of the governing body. The governing body shall grant that approval only after the city or county 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 city or county 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.

(f) At the option of the city or county, the amendments to this subdivision 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. 11. Section 52097.5 of the Health and Safety Code is amended to read:

52097.5. (a) At least 30 days prior to issuing bonds pursuant to this chapter, a charter provision, or an ordinance for the purposes specified in Section 52097, an issuer shall notify the Mortgage Bond and Tax Credit Allocation Committee in writing that the issuer intends to issue bonds pursuant to this chapter or such other authority. The notification shall specify the amount of bonds expected to be issued, the development or developments to be financed, and the development or developments, if any, that are subject to the restriction on occupancy described in subdivision (d). The Mortgage Bond and Tax Credit Allocation Committee shall advise the issuer of the aggregate amount of bonds previously issued in the calendar year pursuant to this chapter, charter provisions, or ordinances.

(b) An issuer shall certify to the Mortgage Bond and Tax Credit Allocation Committee, at the time of filing the notification of intent to issue, that it has in an escrow specifically established for the purpose, an amount equal to 1 percent of the amount of bonds expected to be issued for developments other than developments to be owned by nonprofit or public entities. To the extent that bonds are not issued for the development or developments before the later of the end of the calendar year in which the notification of intent was filed or the passage of nine months during which amounts were available for the issuance under subdivision (d), a pro rata proportion of the amount in the escrow shall be forwarded to the Mortgage Bond and Tax Credit Allocation Committee for immediate deposit in the Rental Housing Construction Fund established

pursuant to Section 50740. To the extent that bonds are issued for the development or developments, or notwithstanding the preceding sentence, are not issued during the periods specified in the preceding sentence for reasons beyond the control of the issuer or the developer, as determined by the issuer, the amount in escrow may be released by the issuer to the appropriate person or entity and not forwarded to the committee for deposit in that fund.

(c) Within five days, exclusive of weekends and holidays, of the issuance of bonds pursuant to this chapter, a charter provision, or an ordinance for the purposes specified in Section 52097, the city, county, or city and county shall notify the Mortgage Bond and Tax Credit Allocation Committee of the amount of the bonds issued.

(d) The maximum aggregate amount of bonds which may be issued pursuant to this chapter, charter provisions, or ordinances for the purposes specified in Section 52097, shall not exceed one billion five hundred million dollars ($1,500,000,000) in any calendar year.

(e) 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 issue shall at all times during the qualified project period meet the requirement of paragraph (1) or (2), whichever is elected by the issuer at the time of issuance of the issue for each development:

(1) Twenty percent or more of the residential units in the development shall be occupied by individuals whose income is 50 percent or less of area median income.

(2) Forty percent or more of the residential units in the development shall be occupied by individuals whose income is 60 percent or less of area median income.

As used in this subdivision, "qualified project period," "income," and "area median income" shall have the meanings specified in, and shall be determined in accordance with the provisions of, subsection (d) of Section 142 of the Internal Revenue Code of 1986, as amended, and United States Treasury regulations and rulings promulgated pursuant thereto.

With respect to a development for which the issuer has elected to meet the requirement of paragraph (1), the rental payments paid by the occupants of the units meeting the requirement of paragraph (2) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 50 percent of area median income. With respect to a development for which the issuer has elected to meet the requirement of paragraph (2), the rental payments paid by the occupants of the units meeting the requirement of paragraph (2) (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those occupants or on behalf of those units) shall not exceed 30 percent of 60 percent of median income.

(f) 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. Section 52098 shall not apply to bonds issued on or after January 1, 1986.

SEC. 12. Section 2.5 of this bill incorporates amendments to Section 65583 of the Government Code proposed by both this bill and SB 1282. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 65583 of the Goverment Code, and (3) this bill is enacted after SB 1282, in which case Section 2 of this bill shall not become operative.

SEC. 13. Section 3.5 of this bill incorporates amendments to Section 33334.3 of the Health and Safety Code proposed by both this bill and SB 1235. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 33334.3 of the Health and Safety Code, and (3) this bill is enacted after SB 1235, in which case Section 3 of this bill shall not become operative.

SEC. 14. Section 6.5 of this bill incorporates amendments to Section 33413 of the Health and Safety Code proposed by both this bill and SB 1287. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 33413 of the Health and Safety Code, and (3) this bill is enacted after SB 1287, in which case Section 6 of this bill shall not become operative.

SEC. 15. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1141

An act to add Section 2982.05 to the Civil Code, relating to contracts.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 2982.05 is added to the Civil Code, to read:

2982.05. All contracts drafted pursuant to Section 2982 shall contain a notice in at least 8-point bold type, acknowledged by the buyer, that reads as follows:

"If you have complaints concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or the Department of Motor Vehicles, Division of Compliance, 2570 24th Street, Sacramento, 95818, or any combination thereof.

After you have received possession of the vehicle, the seller cannot change the financing or payment terms stated in the contract. It is an unfair or deceptive practice for the seller to try to do so, and you do not have to agree to any change.

_____

buyer's signature"

SEC. 2. This act shall not become operative until July 1, 1990.

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

CHAPTER 1142

An act to amend Sections 221.5 and 226.5 of, and to add and repeal Section 226.51 of, the Civil Code, and to amend Section 1522.4 of the Health and Safety Code, relating to adoption.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. This act shall be known and may be cited as the Independent Adoption Preplacement Program Act. It is the intent of the Legislature, in enacting this act, to provide an alternative optional procedure to prospective adoptive parents and birth parents choosing the independent adoption process. This optional procedure is intended to encourage the preplacement assessments and criminal checks of prospective adoptive parents in order to ensure that better placements and more information are available to the birth parents. It is also the intent of the Legislature to encourage preplacement and postplacement counseling of birth parents in order to assure an informed choice of placement of the child by the birth parent and to ensure that birth parents are fully informed about adoption prior to their placement of the child with prospective adoptive parents. The goal is to provide a procedure in which better, more secure placements will be made and the best interests of the adoptive child will be better met.

SEC. 2. Section 221.5 of the Civil Code is amended to read:

221.5. (a) "Full-service adoption agency," for the purposes of this chapter, means any licensed entity engaged in the business of providing adoption services, who does all 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) "Noncustodial adoption agency," for the purposes of this chapter, means any licensed entity engaged in the business of providing adoption services, who does all of the following:

(1) Assesses the prospective adoptive parents.

(2) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants

(3) Cooperatively supervises adoptive placements with a full-service adoption agency, but does not disrupt a placement or remove a child from a placement.

(c) Private adoption agencies shall be organized and operated on

a nonprofit basis.

(d) An agency described in subdivision (a) or (b) may provide services to birth parents or adoptive parents pursuant to subdivision (b) of Section 226.51. This subdivision shall be inoperative on January 1, 1994.

SEC. 3. Section 226.5 of the Civil Code is amended to read:

226.5. The State Department of Social Services or a licensed county adoption agency shall interview the petitioners and all persons from whom consent is required and whose addresses are known as soon as possible and in the case of residents of California within 45 working days, excluding legal holidays, after the filing of the adoption petition. In order to facilitate these interviews, at the same time the petition is filed, the petitioner shall file with the district office of the State Department of Social Services or with the licensed county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and phone numbers of all parties to be interviewed, if known.

SEC. 4. Section 226.51 is added to the Civil Code, to read:

226.51. (a) Notwithstanding the time limits of Section 226.5, if the person to be interviewed has been advised as provided in subdivision (b) and if there is no serious question about the suitability of the prospective adoptive family as provided in subdivision (c), the State Department of Social Services or a licensed county adoption agency shall interview at the department or agency office any person willing to be interviewed from whom consent is required within 10 working days of receiving a copy of the filed adoption petition and documentation that all of the following conditions have been met:

(1) The person from whom consent is required has been advised pursuant to subdivision (b).

(2) There is no serious question about the suitability of the prospective adoptive family as provided in subdivision (c).

(3) The department or the agency has received the name, address, and phone number of the person to be interviewed and the complete report of the assessment of the prospective adoptive family.

The State Department of Social Services or the licensed county adoption agency may take the consent of the person to the adoption at this interview or subsequently.

(b) The advice required by subdivision (a) shall be given by a representative of the department or a full-service adoption agency or noncustodial adoption agency, as defined in Section 221.5, as specified in this subdivision prior to placement of the child for adoption. The advice shall include a balanced presentation of the alternatives to adoption, the right to obtain additional counseling, the right to retain separate legal counsel, the meaning of the consent to adoption, the right to future information about the status of the adoption, the need of the child and the adopting parents for

complete information on the background of the child, the content of the assessment of the prospective adoptive family, and other information determined necessary by the department. The person giving the advice shall also collect information on the background of the child from the person being advised.

Each person advised pursuant to this subdivision shall be offered at least three separate counseling sessions, to be held on different days, except that this requirement does not apply to birth fathers from whom consent for the adoption is not required. Each counseling session shall be no less than 50 minutes duration. The counseling may be provided by a representative of the department or a licensed adoption agency or by persons licensed to provide psychotherapy or counseling selected by the person. The counseling costs shall be paid by the prospective adoptive parents at the request of the birth parents. If counseling is requested prior to the placement of the child for adoption, it shall be initiated prior to the placement.

Confirmation that a person has been advised and has received counseling, if desired, as required by this subdivision, shall be documented by the department or by an agency as described in Section 221.5 on a form prescribed by the department.

If the person from whom consent is required decides to relinquish the child for adoption, rather than to consent to adoption of the child by the petitioners, the agency advising the birth parent or parents shall not accept the relinquishment of the child, except where there are no other licensed adoption agencies in the county acceptable to the birth parent or parents, in which case the advising agency still shall not accept a relinquishment sooner than five days after completion of the giving of that advice.

(c) The determination that there is no serious question about the suitability of the prospective adoptive family, as required by subdivision (a), shall be based on an assessment conducted by the department or by a licensed adoption agency. The assessment shall be completed or updated within 12 months before the placement of the child for adoption. The assessment shall include consideration of those factors required by the department in a study to determine whether the prospective adoptive family and its home is suitable for a child where neither the department nor a licensed adoption agency is a party to the adoption, except those factors regarding the adjustment of the child in the home. In addition to describing fully information collected in the assessment and the conclusions of the assessment, the report of the assessment shall specify the characteristics of a child which the family would adopt including, but not limited to, age, sex, ethnicity, race, and special needs. The prospective adoptive parents and any person being advised pursuant to subdivision (b) shall be provided with a written summary of the report of the assessment.

If the assessment results in a determination that there is a serious question as to the suitability of the prospective adoptive family, or if the assessment is discontinued prior to completion because of such

a question, the department or the adoption agency shall provide a report of the complete or incomplete assessment to the department. The department shall retain this report for 10 years for use in any assessment of the suitability of the family to adopt a child.

(d) Any relationship between an attorney and a licensed private adoption agency involved in providing advice, counseling, or assessment to any party in an adoption pursuant to subdivision (b), shall be disclosed in writing to any person from whom consent is required and to the prospective adoptive parents.

(e) No licensed private full-service or noncustodial adoption agency, as defined in subdivisions (a) and (b) of Section 221.5, respectively, is required to provide the advice and assessment services specified in subdivisions (b) and (c). However, if an agency elects to provide these services, it shall provide both services. There is no requirement that prospective adoptive parents and birth parents use the same adoption agency for these services. If the agency has a policy that allows it to provide services only to members of specific groups, this policy shall be disclosed to families prior to the beginning of the assessment process.

(f) The department or the licensed county adoption agency shall perform the advice and assessment services specified in subdivisions (b) and (c) at no cost only in those cases where all of the following apply:

(1) The prospective adoptive parents are seeking the assessment because of the intended placement of a specific child of an identified birth parent.

(2) The advice and assessment services can be conducted prior to the placement of the child.

(3) The department or the licensed county adoption agency can provide the services without delaying any mandated service.

(4) The fees specified in subdivision (a) of Section 225q would be waived because they would cause economic hardship to the adoptive parents and would be detrimental to the welfare of the adopted child as determined by the department.

(g) The State Department of Social Services shall study the effect of the processes described in subdivisions (a) and (f), inclusive, on the child and the parties to the adoption. The study shall provide and evaluate comparative data using information regarding the factors specified in this subdivision, which shall cover a period prior to, and concurrent with, the implementation of this section for adoptions conducted under this section or pursuant to other statutory provisions. These factors include the number and percentage of birth parents actually receiving counseling, the number of petitions in which a birth parent seeks the withdrawal of consent to adoption, the number of occasions in which the birth parent's consent is not taken at the initial interview under provisions of this section and the reasons, the number of adoptions commenced and completed under this section and pursuant to other statutory provisions, the number of requests for return of a child by a birth parent after placement but

before consent, the amount of time spent by the state in completing the home study, and the number of negative home studies presented to the court.

The Independent Adoption Preplacement Program authorized by this section shall be deemed to be successful if there is a 10 percent reduction in the number of withdrawals of consent to adoption in cases commenced under this section, and if at least 25 percent of all nonagency adoptions are commenced pursuant to this section at the time the evaluation is completed.

The State Department of Social Services shall report its findings to the Legislature on or before January 1, 1993.

(i) The State Department of Social Services 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 implement this section.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 5 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 ensure 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.

(c) A licensed private full-service or noncustodial adoption agency, as defined in subdivisions (a) and (b) of Section 221.5, respectively, which advises a person as specified in subdivision (b) of Section 226.51 of the Civil Code or which assesses the prospective adoptive family as specified in subdivision (c) of Section 226.51 of the Civil Code shall not have received financial contributions in excess of five hundred dollars ($500) or volunteer or paid services from the adoption petitioners, the attorneys advising the petitioners in connection with the adoption, members of the immediate families of the petitioners or the attorneys advising them in connection with the adoption, or members or employees of any such attorney's firm during a one-year period immediately prior to the beginning of the advice or assessment services and shall not accept financial contributions in excess of five hundred dollars ($500) or volunteer or paid services from any of those persons for at least one year after the advice or assessment service is completed. This does not include fees for services charged by the agency. This subdivision shall be inoperative on January 1, 1994.

SEC. 6. This act shall take effect and become operative only if Senate Bill 64 of the 1989–90 Regular Session or other legislation is chaptered and takes effect on or before January 1, 1990, and provides for the establishment of a fee of at least five hundred dollars ($500) to be paid by the adoptive parents to the State Department of Social Services or the county adoption agency prior to the finding of a favorable report in those cases where the child has not been placed for adoption by a licensed adoption agency or the department.

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 one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1143

An act to amend Sections 20009.1, 20013.7, 20017.79, 20017.97, 20603, 20685, 20745, 20803.8, 20813.5, 20816, 20860, 20898.1, 20930, 20933, 20950.1, 21253, and 21360 of, and to add Sections 20901.5 and 20932.5 to, the Government Code, relating to the Public Employees' Retirement System.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

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

(f) A section of the California Interscholastic Federation.

(g) 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.

(h) 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 20013.7 of the Government Code is amended to read:

20013.7. (a) Effective January 1, 1985, there shall be an alternative level of benefits available to the following state miscellaneous members: (1) members who are excluded from the definition of state employee in subdivision (c) of Section 3513; (2) members who are supervisory employees as defined in Section 3522.1; (3) members employed by the executive branch of government who are not members of the civil services; and (4) members in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section. Effective September 1, 1986, this section shall apply to members employed by the state as provided for in Article VI of the Constitution. The board shall provide the affected members a one-month election period commencing on August 1, 1986. This section shall not apply to state miscellaneous members employed by the California State University or the University of California. This section shall not apply to any employee described by Section 20364 unless and until the employer, as defined in Section 20817, adopts a resolution approving that application.

(b) Effective September 1, 1986, there shall be an alternate level

of benefits available to the following state industrial members: (1) members in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section; (2) members who are excluded from the definition of state employees in subdivision (c) of Section 3513; (3) members who are supervisory employees as defined in Section 3522.1; and (4) members employed by the executive branch of government who are not members of the civil service. The board shall provide the affected members a one-month election period commencing on August 1, 1986.

(c) Members eligible to participate in the alternative level of benefits (hereinafter in this part referred to as the Second Tier) may make an irrevocable election during the period from November 1, 1988, through October 31, 1989, to: (1) become subject to the Second Tier benefits provided for in Section 21251.146 for all past state miscellaneous and state industrial service and all future state miscellaneous and state industrial service not excluded by this section; (2) become subject to the Second Tier benefits provided for in Section 21251.147 for state miscellaneous and state industrial service not excluded by this section rendered on and after the effective date of the election to be subject to the Second Tier. Any election by a member to be subject to Section 21251.146 or Section 21251.147 shall also be signed by the spouse of the member and both signatures shall be notarized; (3) become subject to the First Tier retirement formula prescribed by Section 21251.13 for state miscellaneous and state industrial service rendered on or after the effective date of the election, provided that the member had previously elected coverage pursuant to Section 21251.146 or 21251.147 and makes the contributions specified in Section 20603; or (4) become subject to the First Tier retirement formula prescribed by Section 21251.13 for all past and future state miscellaneous and state industrial service, provided that the member had previously elected coverage pursuant to Section 21251.146 or 21251.147 and the member makes the contributions specified in Sections 20603 and 20813.5. The right of eligible members to elect coverage under the retirement formula of their choice shall apply solely during the above-prescribed one-year period, subject to conditions to be established and communicated by the board.

Thereafter, the board shall provide a 30-day period every five years for eligible members to make an irrevocable election to be subject to the Second Tier benefits provided for in Section 21251.146 or Section 21251.147. Eligible members who previously elected Section 21251.147 may make an irrevocable election to become subject to Section 21251.146 for all past state miscellaneous and state industrial service during this election period. The first election period shall be held five years from the ending date of the one year election period specified in this subdivision.

The effective date of any election filed with the board shall be the

first of the month following the date the election is received in the system, provided the election meets the conditions set by the board. Any election filed with the board under this subdivision shall also be signed by the spouse of the member and both signatures shall be notarized.

(d) Persons who become state miscellaneous or state industrial members described in this section or who become such members under Article 3 (commencing with Section 20360) of Chapter 3 of this part on or after the Second Tier effective date applicable to the member, shall be subject to Section 21251.147 unless an election is filed with the board to be subject to Section 21251.13 and the member makes the contributions specified in Section 20603. The appointing authority shall provide the member with the election form and the member shall exercise the election within one year of becoming a member. The effective date of the election shall be the date on which the member became a state miscellaneous or state industrial member.

(e) A state miscellaneous or state industrial member who, on or after the effective date of an election to be subject to Section 21251.146 or Section 21251.147, ceases to be a member pursuant to Section 20390 or Section 20390.1 shall, upon again becoming a state miscellaneous or state industrial member, be subject to Section 21251.146 or Section 21251.147 in accordance with his or her previous irrevocable election. This subdivision does not apply to persons who return to membership as employees of the California State University.

Except as otherwise provided in this part, a state miscellaneous or state industrial member subject to Section 21251.146 or Section 21251.147 is subject to all other provisions applicable to state miscellaneous members except those provisions that provide for the payment of an annuity based on contributions. Notwithstanding anything to the contrary in this part, member contributions are not required for any service credit that is subject to Section 21251.146.

(f) The board shall report to the Governor, the Legislature, and the Department of Personnel Administration on the savings which are the result of the implementation of the Second Tier retirement plan for state miscellaneous and state industrial members. The report shall first be submitted in April 1986, and annually in April of every year thereafter until April 1994.

SEC. 3. Section 20017.79 of the Government Code is amended to read:

20017.79. "State safety member" shall also include officers and employees of the Board of Prison Terms, Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority in the following classifications:

Classification Code	Classification
0617	Farm Manager
0648	Crops Farmer
0679	Dairy Manager
0682	Dairy Supervisor
0683	Assistant Dairy Operator
2303	Supervisor of Correctional Education Programs
2370	Supervisor of Vocational Instruction
2384	Supervisor of Commercial Diver Training
2311	Youth Authority Teacher
2429	Vocational Instructor (fire science) (correctional facility)
2433	Vocational Instructor (heavy equipment repair) (correctional facility)
1575	Prison Canteen Manager I
1576	Prison Canteen Manager II
7158	Production Manager III, Correctional Industries
7157	Production Manager II, Correctional Industries
7156	Production Manager I, Correctional Industries
7154	Industrial Maintenance Superintendent
7162	Product Engineering Technician, Prison Industries
7163	Production Manager II, Prison Industries (wood products)
7164	Production Manager II, Prison Industries (metal products)
7165	Production Manager II, Prison Industries (textile products)
7170	Detergent Plant Superintendent
7172	Wood Products Factory Superintendent
7175	Assistant Wood Products Factory Superintendent
7178	Wood Products Factory Supervisor
7179	Upholstery Supervisor
7190	Metal Products Factory Superintendent
7189	Assistant Metal Products Factory Superintendent
7191	Metal Products Factory Supervisor

7192	Tool and Die Making Supervisor
7195	Textile Products Factory Superintendent
7196	Bedding Factory Superintendent
7198	Textile Products Factory Supervisor
7201	Tobacco Factory Superintendent
7205	Shoe Factory Superintendent
7206	Shoe Factory Supervisor (lasting through packing)
7207	Shoe Factory Supervisor (cutting and fitting)
7209	Knitting Mill Superintendent
7210	Knitting Mill Supervisor
7211	Knit Goods Finishing Supervisor
7214	Printing Superintendent, Correctional Industries
7215	Industrial Maintenance Supervisor
7216	Printing Supervisor, Correctional Industries
7218	Book Repair and Bindery Supervisor, Correctional Industries
2108	Laundry Superintendent, Correctional Industries
2109	Laundry Supervisor, Correctional Industries
8215	Senior Medical Technical Assistant
9908	Supervising Social Worker II, Youth Authority
9910	Supervising Social Worker I, Youth Authority
9911	Social Worker, Youth Authority
0716	Supervising Groundskeeper II (correctional facility)
0718	Supervising Groundskeeper I (correctional facility)
0720	Lead Groundskeeper (correctional facility)
0743	Groundskeeper (correctional facility)
2004	Janitor Supervisor II (correctional facility)
2005	Janitor Supervisor I (correctional facility)
2006	Janitor (correctional facility)
2044	Supervising Housekeeper I (correctional facility)
2046	Housekeeper (correctional facility)
2068	Shoemaker (correctional facility)
2077	Seamer (correctional facility)
2080	Assistant Seamer (correctional facility)

2084	Barbershop Manager (correctional facility)
2086	Barber (correctional facility)
2111	Laundry Supervisor II (correctional facility)
2114	Laundry Supervisor I (correctional facility)
2117	Laundry Worker (correctional facility)
2120	Laundry Finisher (correctional facility)
2150	Food Manager (correctional facility)
2147	Food Administrator II (correctional facility)
2153	Food Administrator I (correctional facility)
2182	Supervising Cook II (correctional facility)
2183	Supervising Cook I (correctional facility)
2186	Cook II (correctional facility)
2187	Cook I (correctional facility)
2221	Baker II (correctional facility)
2224	Baker I (correctional facility)
2245	Butcher—Meat Cutter II (correctional facility)
2195	Food Service Assistant II (correctional facility)
2196	Food Service Assistant I (correctional facility)
2305	Supervisor of Academic Instruction (correctional facility)
2284	Teacher (arts and crafts) (correctional facility)
2285	Teacher (business education) (correctional facility)
2287	Teacher (elementary education) (correctional facility)
2290	Teacher (high school education) (correctional facility)
2297	Teacher (ethnic studies) (correctional facility)
2291	Teacher (home economics) (correctional facility)
2298	Teacher (librarian) (correctional facility)
2286	Teacher (cerebral palsied children) (correctional facility)

2295	Teacher (recreation and physical education) (correctional facility)
2294	Teacher (music) (correctional facility)
2371	Teacher (speech development and correction) (correctional facility)
2373	Teacher (mentally retarded deaf children) (correctional facility)
2292	Teacher (mentally retarded children) (correctional facility)
2288	Teacher (emotionally/learning handicapped) (correctional facility)
2289	Teacher (family life education) (correctional facility)
2423	Vocational Instructor (dog grooming and handling) (correctional facility)
2665	Vocational Instructor (powerplant mechanics) (correctional facility)
2387	Vocational Instructor (airframe mechanics) (correctional facility)
2396	Vocational Instructor (auto body and fender repair) (correctional facility)
2398	Vocational Instructor (auto mechanics) (correctional facility)
2399	Vocational Instructor (baking) (correctional facility)
2400	Vocational Instructor (bookbinding) (correctional facility)
2417	Vocational Instructor (carpentry) (correctional facility)
2420	Vocational Instructor (cosmetology) (correctional facility)
2422	Vocational Instructor (culinary arts) (correctional facility)
2628	Vocational Instructor (merchandising) (correctional facility)
2425	Vocational Instructor (drycleaning works) (correctional facility)
2426	Vocational Instructor (electrical work) (correctional facility)
2428	Vocational Instructor (electronics) (correctional facility)
2431	Vocational Instructor (furniture refinishing and repair) (correctional facility)
2432	Vocational Instructor (garment making) (correctional facility)

2597	Vocational Instructor (household appliance repair) (correctional facility)
2598	Vocational Instructor (industrial arts) (correctional facility)
2599	Vocational Instructor (instrument repair) (correctional facility)
2600	Vocational Instructor (janitorial service) (correctional facility)
2601	Vocational Instructor (landscape gardening) (correctional facility)
2611	Vocational Instructor (laundry work) (correctional facility)
2614	Vocational Instructor (machine shop practice) (correctional facility)
2615	Vocational Instructor (masonry) (correctional facility)
2619	Vocational Instructor (meat cutting) (correctional facility)
2627	Vocational Instructor (mechanical drawing) (correctional facility)
2630	Vocational Instructor (mill and cabinet work) (correctional facility)
2640	Vocational Instructor (offset printing) (correctional facility)
2644	Vocational Instructor (painting) (correctional facility)
2661	Vocational Instructor (plumbing) (correctional facility)
2666	Vocational Instructor (printing) (correctional facility)
2667	Vocational Instructor (radiologic technology) (correctional facility)
2668	Vocational Instructor (refrigeration and air-conditioning repair) (correctional facility)
2669	Vocational Instructor (sewing machine repair) (correctional facility)
2670	Vocational Instructor (sheet metal work) (correctional facility)
2671	Vocational Instructor (shoemaking) (correctional facility)
2672	Vocational Instructor (silk screening process) (correctional facility)
2673	Vocational Instructor (storekeeping and warehousing) (correctional facility)
2674	Vocational Instructor (typewriter re-

	pair) (correctional facility)
2675	Vocational Instructor (upholstering) (correctional facility)
2419	Vocational Instructor (commercial diver training) (correctional facility)
2677	Vocational Instructor (welding) (correctional facility)
2676	Vocational Instructor (vocational nursing) (correctional facility)
2853	Vocational Instructor (animal husbandry) (correctional facility)
2854	Vocational Instructor (building maintenance) (correctional facility)
2855	Vocational Instructor (computer and related technologies) (correctional facility)
2856	Vocational Instructor (diesel mechanics) (correctional facility)
2857	Vocational Instructor (drywall installer/taper) (correctional facility)
2858	Vocational Instructor (floor cover layer) (correctional facility)
2847	Vocational Instructor (glazier) (correctional facility)
2848	Vocational Instructor (insulation installer, building and pipes) (correctional facility)
2849	Vocational Instructor (office services and related technologies) (correctional facility)
2850	Vocational Instructor (roofer) (correctional facility)
2851	Vocational Instructor (small engine repair) (correctional facility)
2945	Senior Librarian (correctional facility)
2952	Librarian (correctional facility)
6216	Building Maintenance Worker (correctional facility)
6221	Warehouse Worker (correctional facility)
1502	Warehouse Manager II (correctional facility)
1504	Warehouse Manager I (correctional facility)
1505	Materials and Stores Supervisor II (correctional facility)
1508	Materials and Stores Supervisor I (correctional facility)

6379	Heavy Truck Driver (correctional facility)
6382	Truck Driver (correctional facility)
6392	Automotive Equipment Operator II (correctional facility)
6394	Automotive Equipment Operator I (correctional facility)
6471	Carpenter Supervisor (correctional facility)
6483	Carpenter I (correctional facility)
6521	Painter Supervisor (correctional facility)
6524	Painter II (correctional facility)
6474	Carpenter II (correctional facility)
6528	Painter I (correctional facility)
6534	Electrician Supervisor (correctional facility)
6538	Electrician II (correctional facility)
6544	Electrician I (correctional facility)
6545	Plumber Supervisor (correctional facility)
6550	Plumber I (correctional facility)
6557	Steamfitter Supervisor (correctional facility)
6559	Steamfitter (correctional facility)
6617	Mason (correctional facility)
6941	Maintenance Mechanic (correctional facility)
6643	Locksmith (correctional facility)
6699	Chief Engineer I (correctional facility)
6705	Stationary Engineer Supervisor (correctional facility)
6708	Stationary Engineer II (correctional facility)
6697	Stationary Engineer I (correctional facility)
6709	Boilerroom Tender (correctional facility)
6715	Refrigeration Engineer (correctional facility)
6724	Water and Sewage Plant Supervisor (correctional facility)
6748	Chief of Plant Operation III (correctional facility)
6751	Chief of Plant Operation II (correctional facility)
6754	Chief of Plant Operation I (correctional facility)

6763	Supervisor of Building Trades (correctional facility)
6865	Equipment Maintenance Supervisor (correctional facility)
6867	Lead Automobile Mechanic (correctional facility)
6868	Automobile Mechanic (correctional facility)
6893	Automotive Pool Manager I (correctional facility)
6916	Electronics Technician (correctional facility)
8217	Medical Technical Assistant (correctional facilities)
2645	Vocational Instructor (Plastering) (correctional facility)
7200	Dry Cleaning Plant Supervisor
6772	Utility Shops Supervisor (correctional facility)
6801	Machinist (correctional facility)
6826	Heavy Equipment Mechanic (correctional facility)
2688	Vocational Instructor (Eyewear Manufacturing) (correctional facility)
2940	Supervising Librarian (correctional facility)
6594	Plumber II (correctional facility)
7194	Assistant Textile Products Factory Superintendent
7197	Bedding Factory Supervisor
7217	Book Repair and Bindery Superintendent, Correctional Industries
6696	Chief Engineer II (correctional facility)
2000	Janitor Supervisor III (correctional facility)
6222	Laborer (correctional facility)
6955	Fusion Welder (correctional facility)
6211	Skilled Laborer (correctional facility)
2156	Assistant Food Manager (correctional facility)
4132	Construction Supervisor (correctional facility)
6639	Glazier (correctional facility)
7145	Quality Assurance Manager
7146	Chief, Quality Assurance
4110	Chief, Day Labor Program (correctional facility)

4109	Construction Supervisor III (correctional facility)
4108	Construction Supervisor II (correctional facility)
4107	Construction Supervisor I (correctional facility)

In addition, "state safety member" shall also include officers and employees of the Department of Corrections, the Department of the Youth Authority, or the Prison Industry Authority in any classification of vocational instructor, industrial supervisor, industrial superintendent, assistant industrial superintendent, or production manager II (prison industries) which is established on or after January 1, 1984, if the Department of Personnel Administration and the State Personnel Board approve the inclusion of the classification.

"State safety member" shall also include officers and employees in parenthetical specialty classes when the core class has already been expressly included in the state safety membership category if the Department of Personnel Administration and the State Personnel Board approve the inclusion of the classifications The inclusion shall not be effective until notice thereof has been received by the Board of Administration.

Any such officer or employee in employment on the operative date of an amendment to this section and who becomes a state safety member as a result of that amendment, may elect by a writing filed with the board prior to 90 days after notification by the board, to be restored to his or her previous status as a state industrial member Upon the filing of such election the member shall cease to be a state safety member, and his or her rights and obligations shall be restored prospectively and retroactively to the operative date of that amendment.

SEC. 4. Section 20017.97 of the Government Code is amended to read:

20017.97. "State peace officer/firefighter member" also means:

(a) All persons in the office of the Secretary of State, office of the Controller, and the Public Employees' Retirement System employed on a full-time permanent basis with the class title of Special Investigator (Class Code 8553), Senior Special Investigator (Class Code 8550), Investigator Trainee (Class Code 8555) and Investigator Assistant (Class Code 8554) who have been designated as peace officers as defined in Sections 830.2 and 830.3 of the Penal Code.

(b) All persons employed on a full-time permanent basis with the class title of Corporations Investigator (Class Code 8570) or Associate Corporations Investigator (Class Code 8571) who have been designated as peace officers as defined in Sections 830 2 and 830.3 of the Penal Code

(c) All persons employed on a full-time permanent basis with the class title of Sergeant State Fair Police (Class Code 1946), State Fair

Police Officer (Class Code 1945), Lottery Agent (Class Code 8602), Senior Investigator, Structural Pest Control Board (Class Code 8821), Investigator Structural Pest Control Board (Class Code 8802), District Representative I and II, Division of Codes and Standards (Class Codes 8960 and 8958), Deputy Registrar of Contractors I and II (Class Codes 8793 and 8792), Polygraph Examiners, California Youth Authority (Class Code 8542), Community Services Consultant I (Class Code 9717), or Parole Service Associate (Class Code 9776) who have been designated as peace officers as defined in Sections 830.2, 830.3, and 830.5 of the Penal Code.

(d) All persons employed on a full-time permanent basis with the class title of Deputy State Fire Marshal Intern (Class Code 8980).

(e) All persons employed on a full-time permanent basis with the class title of Forester I (Class Code 1054).

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

SEC. 5. Section 20603 of the Government Code is amended to read:

20603. (a) The normal rate of contribution for a state miscellaneous member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976. The normal rate of contribution for a school member, or a local miscellaneous member shall be 7 percent of the compensation paid that member for service rendered on and after the operative date of the amendments to this section at the 1971 Regular Session.

The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21251.13 because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs.

(b) The normal rate of contribution for a state miscellaneous member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on and after July 1, 1976.

(c) The normal rate of contribution for a state miscellaneous member who elects to become subject to Section 21251.146 or Section 21251.147 shall be 0 percent, unless the member subsequently elects

to become subject to Section 21251.13, as authorized by subdivision (c) of Section 20013.7. A member who elects to become subject to Section 21251.13 shall contribute at the rate specified in subdivision (a) or (b) of this section, as determined by the member's status with the federal system, and the rate shall be applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 20813.5. A member who elected to become subject to Section 21251.13 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 20013.7 during the period between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 20813.5.

(d) Notwithstanding any other provision of this part, state member contributions on premium compensation for planned overtime paid at the "half-time" rate as part of the regular shift under the federal Fair Labor Standards Act or the Memorandum of Understanding of State Bargaining Units 7 and 8 are waived for the period April 15, 1985, through June 30, 1988.

This subdivision applies to State Bargaining Units 7 and 8 and becomes effective only if the board approves a waiver of employer contributions on the same premium compensation for the same period of time. If this subdivision is approved by the board, benefits shall be calculated to include overtime paid at the one-half time rate.

SEC. 6. Section 20685 of the Government Code is amended to read:

20685. (a) If a basic death benefit becomes payable before the payment of the total amount the member elected to pay under any election with respect to normal contributions, arrears contributions, absences, or public service credit permitted under this part, the member's entire compensation, or the service upon which that total amount was based, as the case may be, shall be included in the computation of the portion of the death benefit which is provided in subdivision (b) of Section 21361, and the unpaid balance of the total amount shall not be paid to this system, nor shall it be included in the member's accumulated contributions which constitute a part of the basic death benefit.

(b) Any balance of any total amount remaining unpaid at the death of the member on account of whom a special death benefit is payable or at the retirement of a member for industrial disability shall become due and payable forthwith, except that the survivor of a member who died under circumstances under which a special death benefit is payable and who had authorized payroll deductions may elect to continue such deductions from the survivor allowance in lieu of the lump-sum payment otherwise required. If the balance is not paid, the portion of the unpaid amount representing contributions on compensation earned in the membership applicable to the member at the time of injury resulting in death or disability shall be deducted from the benefit otherwise payable and

the system shall be discharged from any liability for any annuity or benefit with respect to any remainder of the unpaid contribution.

(c) Any balance of the total amount remaining unpaid at the time of retirement for service or ordinary disability, or at death, with respect to which a benefit is payable under Section 21365.5, shall become due and payable immediately, except that the survivor of a member who died under circumstances under which a benefit under Section 21365.5 is payable and who had authorized payroll deductions may elect to continue those deductions from the survivor allowance in lieu of a lump-sum payment of the balance due. If the balance is not paid, the service credit included in the election shall be reduced proportionately and any service credit dependent on completion of payments eliminated for purposes of computing the allowance but not for purposes of determining entitlement to an allowance.

(d) Notwithstanding any provision of subdivision (b) or (c), a member who retires after January 1, 1976, before payment of the total amount which he or she elected to pay, may elect to pay the balance due, or the total amount if no payroll deductions had been made prior to retirement, by deductions from his or her retirement allowance equal to those which the member authorized as payroll deductions. In such case, service credit included in the election shall not be reduced, nor shall any prior service dependent on completion of payments be eliminated for purposes of computing the allowance. Any balance of the total amount remaining unpaid upon the death of the member shall be treated in the same manner as unpaid balances are treated if a special death benefit is payable, except that the survivor of a retired member who had authorized deductions from his or her retirement allowance in accordance with this subdivision, and who is eligible for a monthly allowance, may elect to continue those deductions from the survivor's allowance in lieu of the lump-sum payment otherwise required.

(e) Interest paid with respect to normal contributions, arrears contributions, absences, or public service credit permitted under this part, prior to date of retirement or death of the member, shall be credited to the member's individual account. Interest paid after the date of retirement or death of the member shall be credited to the retirement fund pursuant to Section 20203.

SEC. 7. Section 20745 of the Government Code is amended to read:

20745. Notwithstanding any other provision of this part, the state's contribution on premium compensation for planned overtime paid at the "half-time" rate as part of the regular shift under the federal Fair Labor Standards Act or the Memorandum of Understanding of State Bargaining Units 7 and 8 are waived for the period April 15, 1985, through June 30, 1988. This section applies to State Bargaining Units 7 and 8 and becomes effective only if the board approves a waiver of employer contributions on the same premium compensation for the same period of time. If this section

is approved by the board, benefits shall be calculated to include overtime paid at the one-half time rate.

SEC. 8. Section 20803.8 of the Government Code is amended to read:

20803.8. "State safety service" with respect to a member who becomes a state safety member pursuant to Section 20017.79 shall also include service prior to the date on which he or she becomes a state safety member as an officer or employee of the Adult Authority, Department of Corrections, Prison Industry Authority, or the Department of the Youth Authority.

SEC. 9. Section 20813.5 of the Government Code is amended to read:

20813.5. (a) A member who elects to receive service credit under Section 21251.13, as authorized by subdivision (c) of Section 20013.7, for time during which he or she was subject to Section 21251.147, shall contribute in a lump sum or by installments, over such period and subject to such minimum payments as may be prescribed by regulations of the board, an amount equal to the contributions he or she would have made had he or she not been subject to Section 21251.147, plus an amount equal to the interest, to the date of completion of payments, which would have been credited to those contributions.

(b) A member who elects to receive service credit under Section 21251.13, as authorized by subdivision (c) of Section 20013.7, for time during which he or she received service credit under Section 21251.146, shall deposit in the retirement fund, subject to the regulations of the board, an amount equal to (1) any accumulated contributions that he or she withdrew pursuant to Section 20653, plus an amount equal to the interest, to the date of completion of payments, which would have been credited to those contributions, and (2) an amount equal to the contributions he or she would have made had he or she not been subject to Section 21251.146, plus an amount equal to the interest, to the date of completion of payments, which would have been credited to those contributions.

Upon electing to be subject to Section 21251.13, a member shall return to coverage under that formula without credit for any previous creditable state miscellaneous or industrial service credited at no cost pursuant to Section 20813.1, unless the member elects to redeposit or to purchase the service as otherwise required in this part, or the member has elected to be subject to Section 21251.13 solely for service rendered on or after the effective date of the election, as permitted during the one-year period specified in subdivision (c) of Section 20013.7.

SEC. 9.5. Section 20816 of the Government Code is amended to read:

20816. Notwithstanding any other provisions of this part, whenever the Governor, by executive order, determines that because of an impending curtailment of, or change in the manner of performing service, the best interests of the state would be served

by encouraging the retirement of state employees, and that sufficient economies could be realized to offset any cost to state agencies resulting from this section, an additional two years of service shall be credited to state members, other than school members, if the following conditions exist:

(a) The member meets the service requirements of Section 20950 or Section 20950.1 and retires during a period not to exceed 120 days or less than 60 days commencing no sooner than the date of issuance of the Governor's executive order which shall specify such period.

(b) The appointing power, as defined in Section 18524, or the Board of Regents of the University of California or the Board of Trustees of the California State University, 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 the member 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 appointing power or the Board of Regents or the Board of Trustees determines that it is electing to exercise the provisions of this section, pursuant to the Governor's order, and certifies to the State Department of Finance and to the Office of Legislative Analyst, as to the specific economies that will be realized were the additional service credit towards retirement granted.

As used in this section, "member" means a state employee who is employed in a job classification, department, or other organizational unit designated by the appointing power, as defined in Section 18524, the Board of Regents of the University of California, or the Board of Trustees of the California State University.

The amount of service credit shall be two years regardless of credited service, but shall not exceed the number of years intervening between the date of the member's retirement and the date the member would be required to be retired because of age. The appointing power or the Board of Regents or the Board of Trustees shall make such payment with respect to all eligible employees who retired pursuant to this section.

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 be applicable to any member otherwise eligible if such 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 date of issuance of the executive order or if the member is not eligible to retire without the additional credit available under this section.

The benefit provided by this section shall not be applicable to the employees of any appointing power or the Board of Regents or the Board of Trustees until the Director of Finance approves the

transmittal of funds by that appointing power or the Board of Regents or the Board of Trustees to the retirement fund pursuant to subdivision (c).

The Director of Finance shall approve the transmittal of funds by the appointing power or the Board of Regents or the Board of Trustees not sooner than 30 days after 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 such lesser time as the chairperson of the committee, or his or her designee, may in each instance determine. If there is any written communication between the Director of Finance and the Legislative Analyst, a copy thereof shall be forthwith transmitted to the chairperson of each appropriate policy committee.

SEC. 10. Section 20860 of the Government Code is amended to read:

20860. Except as provided in Article 4 (commencing with Section 20890), time during which a member is absent from state service without compensation shall not be allowed in computing service.

SEC. 11. Section 20898.1 of the Government Code is amended to read:

20898.1. "Leave of absence" also means any time during which a member is granted an approved leave for the purpose of service with a university; college; local, state, federal or foreign governmental agency; or nonprofit organization, if he or she returns to employment within the terms and conditions under which the leave was granted. However, any member electing to receive credit for that leave of absence shall in addition to contributions otherwise required by this article contribute an amount equal to the contribution that would have been made on behalf of the member had the member not been absent, assuming that the employer rate of contribution in effect at the time of election had been in effect during the absence. In no event shall a member receive service credit in excess of two years for each approved leave of absence.

SEC. 12. Section 20901.5 is added to the Government Code, to read:

20901.5. Notwithstanding Section 20901, for a member electing to receive service credit for time during which he or she was absent from state service who is subject to Sections 21251.146 and 21251.147, the contribution rate to be used for the purposes of computation shall be deemed to be the contribution rate that would have been used had the member not been subject to Sections 21251.146 and 21251.147.

SEC. 13. Section 20930 of the Government Code is amended to read:

20930. "Public service" for purposes of this article means the following:

(a) The period of time an employee served the state, a school employer, or a contracting agency prior to becoming a member,

when the service was rendered in a position in which the employee was excluded provided one of the following conditions is met:

(1) The position has since become subject to compulsory membership in this system.

(2) The employee was excluded because the employee was serving on a part-time basis.

(3) The employee was excluded because the employee failed to exercise the right to elect membership under this part.

(b) Employment in the State Emergency Relief Administration or the State Relief Administration subsequent to March 1933, regardless of the source of the compensation paid for that employment.

(c) Employment as an academic employee of the University of California prior to October 1, 1963. However, any member electing to receive credit for public service shall in addition to other contributions required by this article contribute an amount equal to the contributions which would have been made on his or her behalf by the state had he or she been in membership during that employment, assuming that the state rate of contribution in effect at the time of election has been in effect during that employment.

(d) Employment of the state in which the person was not eligible for membership in the system if the ineligibility was solely because his or her compensation was paid from other than state-controlled funds. However, time spent in work as a work relief recipient under programs such as, but not limited to, the Works Progress Administration, the Civil Works Administration, the Federal Emergency Relief Administration, the National Youth Administration, and the Civilian Conservation Corps, shall not constitute public service.

(e) Employment in a function formerly performed by a public agency other than a contracting agency and assumed by a contracting agency where the employees who performed those functions are or were transferred to or employed by the contracting agency without change in occupation or position.

(f) Civilian service as an employee or officer of an agency of the government of the United States which performed functions the same as or substantially similar to those performed by this state prior to January 1, 1942, and which were transferred from the state to that agency, including military service in any branch of the armed forces of the United States performed by an individual on military leave of absence from that federal employment, if all the following conditions exist:

(1) Prior to performing that federal service he or she was employed by the state.

(2) He or she was laid off from state service or would have been so laid off if he or she had not been absent in military service because of the transfer of the functions of the state to an agency of the United States government.

(3) Subsequent to his or her layoff from state service he or she was

employed by the United States government in an agency performing functions the same as or substantially similar to those of the state agency from which he or she was laid off.

(4) After his or her separation from federal service, he or she was employed by a state agency.

(5) In lieu of subparagraphs (1), (2), and (3), the United States government pays to the state or an agency of the state, funds equal to contributions which would have been made by the state had the member been in state service for the period of his or her public service with respect to members who were not employed by the state prior to entering that federal employment or whose state service prior to entering that federal employment was terminated for reasons other than the transfer of the function.

(g) Employment in a district, prior to the time the district became a subsidiary district of a city, of a person who was employed by the city following the reorganization to render service to the district and who became a member in that employment.

SEC. 14. Section 20932.5 is added to the Government Code, to read.

20932.5. Notwithstanding Section 20932, for a member electing to receive credit for public service who is subject to Sections 21251.146 and 21251.147, the contribution rate to be used for purposes of computation shall be deemed to be the contribution rate that would have been used had the number not been subject to Sections 21251 146 and 21251.147.

SEC. 15. Section 20933 of the Government Code is amended to read:

20933. Public service may be credited as current or prior service, or both, as it would be credited if the member had been in state service during his or her public service. Credit shall not be granted for public service which would be credited as prior service unless the member has contributed for all other "public service" for which he or she is entitled to elect to receive credit as current service with the employer where the prior service is to be credited.

Benefits based on credited public service shall be computed according to the formula determining the member's contribution for that service credit. "Public service," as defined in subdivisions (a), (b), and (c) of Section 20930 to a member who at membership became subject to a reduced or modified retirement allowance formula because of coordination with the federal system shall be subject to that modified formula to the extent that the service was rendered to any contracting agency in which that modified formula applies after the effective date of coverage under the federal system of members in the employ of that agency.

SEC. 16. Section 20950.1 of the Government Code is amended to read:

20950.1. (a) A state member who became subject to the Second Tier upon election or upon membership in the Second Tier on or after January 1, 1985, shall be retired for service upon his or her

written application to the board if he or she has attained age 55 and is credited with 10 years of state service.

(b) A state member who elected coverage under Section 21251.13 for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 20013.7 during the period between November 1, 1988, and October 31, 1989, and who would otherwise be subject to Section 21251.146 or 21251.147, shall be retired for service upon his or her written application to the board if he or she has attained age 55 and is credited with 10 years of state service.

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

SEC 18. Section 21253 of the Government Code is amended to read:

21253 Notwithstanding any other provision of law, and with respect only to an election by a contracting agency to amend its contract to become subject to Section 21252.6, 21252.61, or 21252.02, instead of Section 21252.1, the following shall apply:

(a) Members who are on the amending agency's active payroll on the effective date of the contract amendment shall elect in writing, within 90 days after the notification by the board of the amendment, to be subject to Section 21252.1, 21252.61, or 21252.02, as applicable, or Section 21252.6 with respect to all safety service performed for the contracting agency.

(b) Members on the effective date who are former employees of the amending agency and whose service for the amending agency was subject to Section 21252.1 or Section 21252.6, shall retain their rights under the formula in effect at the time their service was credited.

(c) Former members who upon reentry into state service elect to redeposit contributions, shall be subject to Section 21252.6, 21252.61, or 21252.02, as applicable, with respect to all safety service performed for the amending agency prior to the effective date of the contract amendment.

(d) Notwithstanding Section 21251.15, a former member who reinstates to the amending agency as a local safety member shall elect within 90 days of the reinstatement whether to be subject to Section 21252.6, 21252.61, or 21252.02, as applicable, or Section 21252.1 with respect to all service with that contracting agency prior to the effective date of the contract amendment. The election shall be effective only if the reinstated member remains in the employment for at least one year subsequent to reinstatement.

SEC. 19. Section 21360 of the Government Code is amended to read:

21360. (a) This system is liable for either the basic or special death benefit upon the death of a member in the following

circumstances:

(1) Before the effective date of retirement, and (A) while in state service, or (B) while absent on military service, provided the member has made contributions during the absence under Section 20892.5 or has had contributions made on his or her behalf under Section 20894.5, or (C) within four months after discontinuance of state service, or (D) while on an approved leave of absence, or (E) while physically or mentally incapacitated for the performance of duty, if such incapacity has been continuous from discontinuance of state service, or (F) while employed as a member of a retirement system established under the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3); provided, such employment resulting in membership was begun on or after October 1, 1957, and within 90 days after discontinuance of state service; or

(2) While in state service in partial service retirement pursuant to Article 1.7 (commencing with Section 19996.30) of Chapter 7 of Part 2.6; or

(3) On or after the effective date of retirement and before the mailing of a retirement allowance warrant and either within four months of discontinuance of state service or while physically or mentally incapacitated for the performance of duty if such incapacity has been continuous from discontinuance of state service, and providing all of the following conditions exist: (A) the retirement of the member was not compulsory under Article 2 (commencing with Section 20980) of Chapter 8, and (B) the member has not elected optional settlement 2 or 3 or an optional settlement 4 involving payment of an allowance throughout the life of a beneficiary under Article 4 (commencing with Section 21330) of Chapter 9, and (C) a partially continued allowance under Sections 21263 to 21263.6, inclusive, is not payable.

(b) This system is liable for a limited death benefit, which consists only of the accumulated contributions of the member payable to his or her beneficiary or estate, under the following circumstances:

(A) Upon the death of a member before the effective date of his or her retirement or, with respect to (1) any member whose retirement was not compulsory under Article 2 (commencing with Section 20980) of Chapter 8, and (2) any member who has not elected optional settlement 2 or 3 or an optional settlement 4 involving payment of an allowance throughout the life of a beneficiary under Article 4 (commencing with Section 21330) of Chapter 9, on or after that effective date and before the mailing of the first retirement allowance warrant, and

(B) Under those circumstances in which this system is not liable for either the basic or special death benefit provided in subdivision (a) of this section, and a partially continued allowance under Sections 21263 to 21263.6, inclusive, is not payable.

(c) Liability imposed on this system with respect to the death of a member while on approved leave of absence by amendment to this

section enacted during the 1965 Regular Session shall extend to death of members occurring on or after July 1, 1964, and to any benefit for which there would have been liability with respect to the death had that amendment been effective on that date.

CHAPTER 1144

An act to amend Sections 18045.5, 18070.3, 18123.5, and 18929 of, to add Section 18058.1 to, and to repeal Section 18013.2 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 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 18013.2 of the Health and Safety Code is repealed.

SEC. 2. Section 18045.5 of the Health and Safety Code is amended to read:

18045.5. (a) The department shall not issue a manufacturer, distributor, or dealer license to any applicant therefor who does not have an established place of business.

(b) In the case of a dealer or distributor, the established place of business shall have an office located within the State of California. In the case of a manufacturer, the established place of business shall have a manufacturing area defined by department regulations situated on the same property. When a room or rooms in a hotel, roominghouse, apartment house building, or a part of any single-unit or multiple-unit dwelling house is used as an office or offices of an established place of business, the room or rooms shall be devoted exclusively to, and occupied for, the office or offices of the licensee, shall be located on the ground floor, and shall provide a direct entrance into the room or rooms from the exterior of the building.

(c) The established place of business shall be open for inspection of the premises, pertinent records, and manufactured homes, mobilehomes, or commercial coaches by any department representative during business hours.

SEC. 3. Section 18058.1 is added to the Health and Safety Code, to read:

18058.1. (a) Any manufacturer or dealer licensed under this part that has closed its place of business, or any salesperson licensed under this part no longer residing at the address last filed with the department, may be served with process issued pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code by registered mail at that place of

business in the case of a manufacturer or dealer, or at the last address filed with the department in the case of a salesperson, unless the manufacturer, dealer, or salesperson has notified the department in writing of another address where service may be made.

(b) This section shall apply to any manufacturer, dealer, or salesperson who is licensed under this part or whose license is renewed under this part, on or after the effective date of this section.

SEC. 4. Section 18070.3 of the Health and Safety Code is amended to read:

18070.3. (a) When any person (1) who has purchased a mobilehome for a personal, family, or household residential purpose or (2) who has sold a mobilehome used by the seller for a personal, family, or household residential purpose, obtains either (A) a final judgment in any court of competent jurisdiction against any mobilehome dealer, salesperson, or other seller or purchaser, or (B) an administrative determination against a licensee who is or has been the subject of bankruptcy proceedings, and the judgment or administrative determination is on the grounds of failure to honor warranties or guarantees, or for fraud, or for willful misrepresentation of the kind or quality of the product sold or purchased, or for conversion, arising directly out of any transaction which occurs on or after January 1, 1985, the person, upon termination of all proceedings including appeals, may file a claim with the department for an order directing payment out of the fund of the amount of actual and direct loss in the transaction. No person applying for recovery from the fund shall apply for judgment on any bond issued prior to January 1, 1985.

(b) "Administrative determination," for the purposes of this chapter, means either an order of restitution or a finding of actual and direct loss rendered pursuant to Section 18021.5 which is adopted by the department as part of its final decision in the underlying case.

(c) "Actual and direct loss," for the purposes of this chapter, includes court costs and reasonable attorney fees not to exceed 15 percent of the judgment or administrative determination.

(d) The total amount of the claim shall not exceed the amount of actual and direct loss that remains unreimbursed from any source.

The maximum payment ordered under this section, with respect to any one sales transaction on a new or used mobilehome, shall be the amount of the judgment plus attorney fees, or the amount of the administrative determination plus attorney fees, whichever is less, but in no event more than forty thousand dollars ($40,000).

(e) "Conversion," for the purpose of this chapter, means the unlawful appropriation of the property of another.

(f) Prior to payment of any claim against the fund, the claimant or claimants shall have first:

(1) If the claim is based on a final judgment, executed judgment against all the assets of the judgment debtor or presented evidence satisfactory to the department that the debtor is judgment proof.

(2) If the claim is based on an administrative determination,

presented evidence satisfactory to the department that the licensee is or has been the subject of bankruptcy proceedings and, for purposes of any civil litigation or claims in bankruptcy proceedings, has assigned to the department any interest in the actual and direct loss described in subdivision (a) in the amount that the claimant or claimants recover from the fund.

(g) A claim against the fund shall be filed with the department (1) within one year from the date of the judgment or (2) in the event that a claim is based on an administrative determination, within one year from the termination of bankruptcy proceedings or the effective date of the department's decision adopting the administrative determination, whichever is later in time.

(h) When any person files a claim for an order directing payment from the fund, the department shall conduct a review of the application, and it may issue an order directing payment out of the fund as provided in subdivisions (a) to (g), inclusive, subject to the limitations of subdivisions (a) to (g), inclusive, if the claimant or claimants show all of the following:

(1) That he or she is not a spouse of the judgment debtor or a person against whom an administrative determination was rendered, whichever is applicable, or a person representing the spouse.

(2) That he or she is making an application within the time specified in subdivision (g).

(3) That the claimant has satisfied the applicable requirements of subdivision (f).

(4) That, if the claimant is a seller of a mobilehome used by the seller for personal, family, or household purposes, the claimant made a good faith effort to adequately secure the debt resulting from the sale of the mobilehome and with respect to which the claim is made. For purposes of this paragraph, a good faith effort to secure the debt may be demonstrated by, but shall not be limited to, providing the department with a promissory note signed by the debtor and which, pursuant to the terms thereof, is secured by collateral with a reasonable value at least equal to the debt evidenced by the promissory note.

(i) Upon an order of the department directing that payment be made out of the fund, the Controller is authorized to draw a warrant for the payment of the amount of the claim approved by the department pursuant to this section.

SEC. 5. Section 18123.5 of the Health and Safety Code is amended to read:

18123.5. (a) A dealer who violates paragraph (1), (2), or (3) of subdivision (b) of Section 18080.5 shall pay to the department an administrative service fee of five dollars ($5) for each violation.

(b) A dealer who violates paragraph (4) of subdivision (b) of Section 18080.5, when selling, leasing, or renting a manufactured home, mobilehome, or commercial coach, shall pay to the department an administrative service fee as follows:

(1) If the application is submitted after 10 calendar days but

within 20 calendar days from the date of sale, lease, or rental; ten dollars ($10).

(2) If the application is submitted after 20 calendar days but within 30 calendar days from the date of sale, lease, or rental; twenty dollars ($20).

(3) If the application is submitted after 30 calendar days but within 60 calendar days from the date of sale, lease, or rental; forty dollars ($40).

(4) If the application is submitted after 60 calendar days from the date of sale, lease, or rental; two hundred dollars ($200).

(c) Each violation of subdivision (b) of Section 18080.5 shall be, in addition to the obligation to pay the administrative service fee, a separate cause for discipline pursuant to Section 18058.

(d) Nonpayment of an administrative service fee within 10 days after written demand from the department shall be a separate cause for discipline pursuant to Section 18058.

SEC. 6. Section 18929 of the Health and Safety Code is amended to read:

18929. (a) Except as otherwise provided in subdivision (b), administrative regulations adopted by state agencies that apply directly to the implementation or enforcement of building standards shall be forwarded to the Building Standards Commission for approval. Each regulation shall be adopted in compliance with 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, and Section 18930 of the Health and Safety Code. These administrative regulations shall be published in the administrative chapters of the California Building Standards Code.

(b) The provisions of this section shall not apply to any regulations adopted by the Department of Housing and Community Development that apply directly to the implementation or enforcement of building standards.

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

SEC. 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:

This bill would allow the Department of Housing and Community Development to more effectively regulate those persons engaged in the manufacturing and sale of manufactured homes and

mobilehomes, would permit the department to have greater control over the implementation and enforcement of certain building standards, and would expand the protections afforded to consumers involved in transactions related to mobilehomes; therefore, it is necessary that this act take effect immediately.

CHAPTER 1145

An act to amend Sections 15820.16 and 15820.18 of, and to add Section 15820.185 to, the Government Code, relating to state building construction.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 15820.16 of the Government Code is amended to read:

15820.16. (a) The State Public Works Board may finance the acquisition of land, buildings, related infrastructure, and equipment and the construction, renovation, and equipping of research facilities and related infrastructure on a site or sites owned by, or subject to a lease or option to purchase held by, the University of California, including buildings or facilities to be leased-purchased by the United States Government.

(b) The board shall lease-purchase to the Regents of the University of California any public building or facility acquired, constructed, renovated, or equipped pursuant to this chapter. The terms and the amount of the lease-purchase shall be determined by mutual agreement of the parties. The agreement shall provide that the public building or facility shall be utilized for research. The board shall contract with the lessee for all activities required to acquire, plan, construct, equip, and renovate these facilities.

SEC. 2. Section 15820.18 of the Government Code is amended to read:

15820.18. (a) The board may issue certificates pursuant to Chapter 4 (commencing with Section 15821) or revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) to finance the cost of acquisition, construction, or renovation and the equipping of the public buildings or facilities and related infrastructure authorized by this chapter.

(b) The revenues, rentals, or receipts received by the board from the public buildings or facilities and equipment authorized by this chapter shall be pledged to the payment of the principal of, and the interest on, the certificates, revenue bonds, notes, or anticipation notes issued to finance the acquisition, construction, or renovation

and the equipping of those public buildings or facilities and related infrastructure.

(c) No certificates, revenue bonds, notes, or anticipation notes shall be issued, and no acquisition, construction, or renovation and the equipping for any public building or facility and related infrastructure authorized by this chapter shall be commenced or purchased, unless the Legislature, by statute, authorizes the total amount of certificates, revenue bonds, notes, or anticipation notes that may be used to finance that public building or facility and related infrastructure, or the Legislature, pursuant to Section 15820.185, authorizes a specific amount of financing to be made available to the board for a specific period of time to finance the cost of acquisition, construction, or renovation and the equipping of public buildings or facilities and related infrastructure without authorizing any specific building.

At any legislative hearing wherein a proposed statute described in this subdivision is considered, there shall be included, but not limited to, in that consideration an examination of the total interest cost of the issue.

(d) Any project proposed for funding under Section 15820.185 shall be approved by statute except that the board may request a waiver of this approval requirement. To secure such a waiver, the board shall submit to the Joint Legislative Budget Committee and to the appropriate policy and fiscal committees of the Legislature sufficient information for any committee of the Legislature to examine the merits of the projects. The Joint Legislative Budget Committee may waive the statutory approval of projects after consultation with the fiscal committees within 90 days or sooner of the submission of the projects by the board.

(e) All increases in revenues received by the University of California arising from use of the buildings, facilities, or equipment financed pursuant to Section 15820.185 shall be available to the Regents of the University of California and shall, to the extent necessary, be used by the regents for the purposes of making the lease or lease-purchase payments to the board.

(f) The cost of the lease or lease-purchase agreement with the board under Section 15820.185 payable from university funds shall be the responsibility of the regents. For purposes of this subdivision, "university funds" shall not include any funds appropriated from the General Fund.

SEC. 3. Section 15820.185 is added to the Government Code, to read:

15820.185. (a) The Legislature hereby authorizes the board to use until June 30, 1992, revenue bonds and negotiable notes or negotiable bond anticipation notes issued pursuant to this chapter in an amount not to exceed two hundred fifty million dollars ($250,000,000) to finance the costs of acquisition of land, buildings, related infrastructure, and equipment and the cost of construction, renovation, and equipping of research facilities and related

infrastructure to be dedicated to long-term scientific research activities which are expected to generate a stable revenue base over the term of the lease or lease-purchase agreement and to enhance the economy of this state and the nation or the competitive position of this state and the nation in the international economy.

(b) The amount of negotiable bond anticipation notes to be sold shall not exceed the amount of revenue bonds or negotiable notes authorized by this section.

CHAPTER 1146

An act to amend Sections 708, 906, 977, 977.5, 980, 1088, 1110, 1113.1, 1178, 1253.3, 1260, 1280, 1281, 1329, and 1332 of, and to add Sections 976.5, 1112.5, and 1591 to, the Unemployment Insurance Code, relating to unemployment insurance, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 708 of the Unemployment Insurance Code is amended to read:

708. (a) Any individual who is an employer under this division or any two or more individuals who have so qualified may file with the director a written election that their services shall be deemed to be services performed by individuals in employment for an employer for all the purposes of this division. Upon the approval of the election by the director the services of such individuals shall be deemed to constitute employment for an employer for all the purposes of this division. Regardless of their actual earnings, for the purposes of computing benefit rights and contributions under this division, they shall be deemed to have received remuneration for each calendar quarter in whichever is the higher of the following:

(1) The highest maximum amount stated in Section 1280.

(2) The highest maximum amount stated in column A of Section 2655.

(b) Any individual who is an employer under this division or any two or more individuals who have so qualified may file with the director a written election that their services shall be deemed to be services performed by individuals in employment for an employer for the purposes of Part 2 (commencing with Section 2601) only of this division. Upon the approval of the election by the director the services of such individuals shall be deemed to constitute employment for an employer for the purposes of Part 2 (commencing with Section 2601) only of this division. Regardless of their actual earnings, for the purposes of computing disability benefit

rights and worker contributions, they shall be deemed to have received remuneration for each calendar quarter in the highest of the maximum amounts stated in column A of Section 2655.

(c) Contributions required under this division are payable on and after the date stated in the approval of the director. The director may levy assessments under this division for any amount due under this section.

(d) No benefits shall be paid to any individual based upon remuneration deemed to have been received pursuant to this section unless all contributions due with respect to all remuneration deemed to have been received by such individual pursuant to this section have been paid to the department.

SEC. 2. Section 906 of the Unemployment Insurance Code is amended to read:

906. "Contributions paid on his own behalf" means:

(a) All contributions paid under this part to the Unemployment Fund on behalf of an employer with respect to wages paid by him on or before the computation date for any rating period, which have been paid on or before the end of the calendar month next succeeding such computation date.

(b) Any additional amount of contributions paid under this part to the Unemployment Fund on behalf of an employer with respect to wages paid by him on or before the computation date for any rating period, which have been assessed pursuant to Section 1036 and have been paid before the delinquent date for the calendar quarter in which he is given notice of the assessment pursuant to Section 1036.

(c) Any additional contributions paid pursuant to Section 976.5.

SEC. 3. Section 976.5 is added to the Unemployment Insurance Code, to read:

976.5. (a) Effective January 1, 1991, except as provided in subdivision (b), in addition to other contributions required by this division, every employer, except an employer to which subdivision (c) is applicable, may submit a voluntary unemployment insurance contribution for the purpose of redetermining its unemployment insurance contribution rate. No redetermination of a contribution rate shall be made unless the voluntary contribution is submitted as required in subdivision (c) of Section 1110. No redetermination shall reduce an employer's unemployment insurance contribution rate by more than three rates as provided in Section 977.

(b) This section shall not be operative in calendar years in which contribution rates Schedules E and F in Section 977 are in effect, or in calendar years to which the emergency solvency surcharge provided in Section 977.5 is in effect.

(c) This section shall not apply to any of the following:

(1) An employer not eligible for a contribution rate other than that provided pursuant to Section 982.

(2) An employer with a negative reserve account balance on the computation date.

(3) An employer with outstanding liability on the records of the department on December 31 preceding the year to which a contribution rate is applicable.

SEC. 4. Section 977 of the Unemployment Insurance Code is amended to read:

977. (a) If, as of the computation date, the employer's net balance of reserve equals or exceeds that percentage of his or her average base payroll which appears on any line in column 1 of the following table, but is less than that percentage of his or her average base payroll which appears on the same line in column 2 of that table, his or her contribution rate shall be the figure appearing on that same line in the appropriate schedule, as defined in subdivision (b), which shall be a percentage of the wages specified in Section 930.

	Reserve Ratio		Contribution Rate Schedules						
	Column	Column							
Line	1	2	AA	A	B	C	D	E	F
01	less than –20		5.4	5.4	5.4	5.4	5.4	5.4	5.4
02	–20 to –18		5.2	5.3	5.4	5.4	5.4	5.4	5.4
03	–18 to –16		5.1	5.2	5.4	5.4	5.4	5.4	5.4
04	–16 to –14		5.0	5.1	5.3	5.4	5.4	5.4	5.4
05	–14 to –12		4.9	5.0	5.3	5.4	5.4	5.4	5.4
06	–12 to –11		4.8	4.9	5.2	5.4	5.4	5.4	5.4
07	–11 to –10		4.7	4.8	5.1	5.3	5.4	5.4	5.4
08	–10 to –09		4.6	4.7	5.1	5.3	5.4	5.4	5.4
09	–09 to –08		4.5	4.6	4.9	5.2	5.4	5.4	5.4
10	–08 to –07		4.4	4.5	4.8	5.1	5.3	5.4	5.4
11	–07 to –06		4.3	4.4	4.7	5.0	5.3	5.4	5.4
12	–06 to –05		4.2	4.3	4.6	4.9	5.2	5.4	5.4
13	–05 to –04		4.1	4.2	4.5	4.8	5.1	5.3	5.4
14	–04 to –03		4.0	4.1	4.4	4.7	5.0	5.3	5.4
15	–03 to –02		3.9	4.0	4.3	4.6	4.9	5.2	5.4
16	–02 to –01		3.8	3.9	4.2	4.5	4.8	5.1	5.4
17	–01 to 00		3.7	3.8	4.1	4.4	4.7	5.0	5.4
18	00 to 01		3.4	3.6	3.9	4.2	4.5	4.8	5.1
19	01 to 02		3.2	3.4	3.7	4.0	4.3	4.6	4.9
20	02 to 03		3.0	3.2	3.5	3.8	4.1	4.4	4.7
21	03 to 04		2.8	3.0	3.3	3.6	3.9	4.2	4.5
22	04 to 05		2.6	2.8	3.1	3.4	3.7	4.0	4.3
23	05 to 06		2.4	2.6	2.9	3.2	3.5	3.8	4.1
24	06 to 07		2.2	2.4	2.7	3.0	3.3	3.6	3.9
25	07 to 08		2.0	2.2	2.5	2.8	3.1	3.4	3.7
26	08 to 09		1.8	2.0	2.3	2.6	2.9	3.2	3.5
27	09 to 10		1.6	1.8	2.1	2.4	2.7	3.0	3.3
28	10 to 11		1.4	1.6	1.9	2.2	2.5	2.8	3.1
29	11 to 12		1.2	1.4	1.7	2.0	2.3	2.6	2.9
30	12 to 13		1.0	1.2	1.5	1.8	2.1	2.4	2.7
31	13 to 14		0.8	1.0	1.3	1.6	1.9	2.2	2.5
32	14 to 15		0.7	0.9	1.1	1.4	1.7	2.0	2.3

33	15 to 16	0.6	0.8	1.0	1.2	1.5	1 8	2.1
34	16 to 17	0.5	0.7	0.9	1.1	1.3	1.6	1.9
35	17 to 18	0.4	0.6	0.8	1.0	1.2	1.4	1.7
36	18 to 19	0.3	0.5	0.7	0.9	1.1	1.3	1.5
37	19 to 20	0.2	0.4	0.6	0.8	1.0	1.2	1.4
38	20 or more	0.1	0.3	0.5	0.7	0.9	1.1	1.3

(b) (1) Whenever the balance in the Unemployment Fund on December 31 of any calendar year is greater than 1.8 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule AA.

(2) Whenever the balance in the Unemployment Fund on December 31 of any calendar year is equal to or less than 1 8 percent and greater than 1.6 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule A.

(3) Whenever the balance in the Unemployment Fund on December 31 of any calendar year is equal to or less than 1.6 percent and greater than 1.4 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule B.

(4) Whenever the balance in the Unemployment Fund on December 31 of any calendar year is equal to or less than 1.4 percent and greater than 1.2 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule C.

(5) Whenever the balance in the Unemployment Fund on December 31 of any calendar year is equal to or less than 1.2 percent and greater than 1.0 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule D.

(6) Whenever the balance in the Unemployment Fund on December 31 of any calendar year is equal to or less than 1.0 percent and greater than or equal to 0.8 percent of the wages (as defined by

Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule E.

(7) Whenever the balance in the Unemployment Fund on December 31 of any calendar year is equal to or less than 0.8 percent and greater than or equal to 0 6 percent of the wages (as defined by Section 940) in employment subject to this part paid during the 12-month period ending upon the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at the rates specified in Schedule F.

SEC. 5. Section 977.5 of the Unemployment Insurance Code is amended to read:

977.5. Whenever the balance in the Unemployment Fund on December 31 of any calendar year is less than 0.6 percent of the wages (as defined by Section 940) in employment, subject to this part, paid during the 12-month period ending on the computation date, employers shall pay into the Unemployment Fund contributions for the succeeding calendar year upon all wages with respect to employment at an emergency solvency surcharge rate. The emergency solvency surcharge rate shall be 1.15 times the rate the employer would have paid in Schedule F of subdivision (a) of Section 977, rounded to the nearest one-tenth of 1 percent.

SEC. 6. Section 980 of the Unemployment Insurance Code is amended to read:

980 (a) In determining the balance in the Unemployment Fund for the purpose of Sections 977 and 977.5, there shall be excluded all of the following:

(1) Any amount credited to this state's account in the Unemployment Trust Fund pursuant to Section 903 of the federal Social Security Act, as amended, which has been appropriated for expenses of administration other than for capital assets, whether or not that amount has been withdrawn from that fund.

(2) Any unexpended advance from the federal unemployment account in the Unemployment Trust Fund received in accordance with Section 323 of this division and Title XII of the federal Social Security Act, as amended.

(3) Any amount paid in advance into the Unemployment Fund by an employer under any type of coverage pursuant to which reimbursement of benefits is permitted or required in lieu of the contributions required of employers.

(4) Any amount paid in advance into the Unemployment Fund by the federal government under any federal law that requires or permits this state to pay benefits from the Unemployment Fund and provides for advances by the federal government for reimbursement of all or part of those benefits.

(b) In determining the balance in the Unemployment Fund for

the purpose of Sections 977 and 977.5, there shall also be excluded any estimated or other contributions not legally due and payable with respect to the final calendar quarter of the calendar year, except any payment of contributions made under Sections 976.5 and 1137 and except any payment of contributions by employers terminating business during any calendar quarter.

SEC. 7. Section 1088 of the Unemployment Insurance Code is amended to read:

1088. (a) Each employer shall file with the director within the time required for payment of employer contributions, a return and a report of wages paid to his or her workers in such form and containing such information as the director prescribes.

(b) Each employer shall file with the director within the time required by subdivision (b) of Section 1110 for payment of worker contributions, a return containing the employer's business name, address, and account number, the total amount of worker contributions due, and such other information as the director shall prescribe. The director shall prescribe the form for the return.

SEC. 8. Section 1110 of the Unemployment Insurance Code is amended to read:

1110. (a) Employer contributions required under Sections 976 and 976.6, the amount of benefits received by any individual pursuant to this part that is deducted from an award or settlement made by the employer under the provisions of Section 1382, and, except as provided by subdivision (b) of this section, worker contributions required under Section 984 are due and payable on the first day of the calendar month following the close of each calendar quarter and shall become delinquent if not paid on or before the last day of that month.

(b) Workers' contributions required under Section 984 are due and payable at the same time as amounts required to be withheld under Section 13020 are paid to the department pursuant to Section 13021, regardless of the amount of accumulated unpaid liability for workers' contributions.

(c) Employer contributions submitted pursuant to Section 976.5 shall be paid on or before the last working day of March of the calendar year to which the reduced contribution rate would be applicable.

SEC. 9. Section 1112.5 is added to the Unemployment Insurance Code, to read:

1112.5. (a) Any employer who without good cause fails to file the return and report of wages required by subdivision (a) of Section 1088 and subdivision (a) of Section 13021 within 60 days of the time required under subdivision (a) of Section 1110 shall pay a penalty of 10 percent of the amount of contributions and personal income tax withholding required by this return. This penalty shall be in addition to the penalties required by Sections 1112 and 1126.

(b) For purposes of subdivision (a), the amount of contributions and personal income tax required by the return shall be reduced by

the amount of any contributions and personal income tax paid on or before the prescribed payment dates.

SEC. 10. Section 1113.1 of the Unemployment Insurance Code is amended to read:

1113.1. An employer who through an error caused by excusable neglect makes an underpayment of the amount due on a monthly return pursuant to subdivision (b) of Section 1088 shall not be liable for penalty or interest under Sections 1112, 1113, 1127 or 1129 if proper adjustment is made at the time of the filing of the quarterly return under subdivision (a) of Section 1088 and an explanation of the error is attached to such return.

SEC. 11. Section 1178 of the Unemployment Insurance Code is amended to read:

1178. (a) A claim for refund or credit may be filed with the director for any overpayment including, but not limited to, amounts paid subsequent to the filing for record of a certificate under Section 1703 or the entry of a judgment under Section 1815

(b) No refund shall be made or credit allowed unless a claim therefor is filed with the director within three years from the last day of the calendar month following the close of the calendar quarter for which the overpayment was made or within six months after assessments made under Article 8 (commencing with Section 1126) of this chapter become final or within 60 days from the date of overpayment, whichever period expires the later, but prior to the expiration of such periods even though no claim is filed the director on his own initiative shall make refunds pursuant to Section 1177 or may allow credits.

(c) No refund of employer or worker contributions, penalties or interest shall be made or credit for worker contributions allowed unless the employing unit conforms, within one year after the allowance of credit or approval of the claim for refund, to authorized regulations with respect to the refund to workers entitled thereto of any money deducted by the employing unit under Section 984.

(d) Following a final decision denying a petition for reassessment pursuant to Article 11 (commencing with Section 1221), the employing unit or other person which was a party to the petition may file a claim for refund upon payment of the amount of the assessment, including interest and penalties, and thereafter may pursue all administrative and judicial review rights accorded in Article 11 (commencing with Section 1221) and Article 12 (commencing with Section 1241).

(e) No refund of employer contributions paid pursuant to Section 976.5 shall be made unless the payment is made by an employer described in subdivision (c) of Section 976.5, or the amount paid is less than or exceeds the amount needed to change the employer's contribution rate. Refunds permitted under this subdivision shall be considered an undesignated payment and allocated according to subdivision (b) of Section 1110.1.

SEC. 12. Section 1253.3 of the Unemployment Insurance Code is

amended to read:

1253.3. (a) Notwithstanding any other provision of this division, unemployment compensation benefits, extended duration benefits, and federal-state extended benefits are payable on the basis of service to which Section 3309(a)(1) of the Internal Revenue Code of 1954 applies, in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to this division, except as provided by this section.

(b) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to service in an instructional, research, or principal administrative capacity for an educational institution are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms.

(c) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, with respect to service in any other capacity than specified in subdivision (b) for an educational institution shall not be payable to any individual with respect to any week which commences during a period between two successive academic years or terms if the individual performs the service in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the service in the second of the academic years or terms. However, if the individual was not offered an opportunity to perform the services for an educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision. Retroactive benefits shall be claimed in accordance with the department's procedures which shall specify that except where the individual was entitled to benefits based on services performed for other than an educational institution, an individual who has a reasonable assurance of reemployment may satisfy the search for work requirement of subdivision (e) of Section 1253, by registering for work pursuant to subdivision (b) of Section 1253 during the period between the first and second academic terms or years. A claim for retroactive benefits may be made no later than 30 days following the commencement of the second academic year or term.

(d) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any public

entity as defined by Section 605, with respect to services specified by subdivision (b) or (c), are not payable to any individual with respect to any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(e) With respect to any services specified by subdivision (b) or (c), compensation payable on the basis of services in any such capacity may be denied as specified in subdivision (b), (c), or (d) to any individual who performed the services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing the services to one or more educational institutions.

(f) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any public entity as defined by Section 605, are not payable during the periods of time, and subject to the same conditions, contained in subdivisions (b), (c), (d), and (h), if the services are provided to, or on behalf of, an educational institution.

(g) For purposes of this section, "reasonable assurance" includes, but is not limited to, an offer of employment or assignment made by the educational institution, provided that the offer or assignment is not contingent on enrollment, funding, or program changes. An individual who has been notified that he or she will be replaced and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance.

(h) For purposes of this section, if the time for service performed during the period of and pursuant to any contract for any academic year or term by an individual for any employing unit as specified in subdivision (b) or (c) constitutes one-half or more of the time in total service performed for the employing unit by the individual during that same period for remuneration, all the services of the individual for the employing unit for that period shall be deemed subject to the benefit payment restriction provisions of this section.

(i) Any public entity as defined by Section 605, with respect to any individual performing a service in any other capacity other than specified in subdivision (b) for an educational institution, shall provide a written statement indicating the following to the individual no later than 30 days before the end of the first of the academic years or terms:

(1) Whether or not there is a reasonable assurance of reemployment.

(2) Whether or not it is stated that the individual has no reasonable assurance of reemployment, that the individual should

file a claim for benefits at the close of the academic year or term.

(3) If it is stated that the individual has reasonable assurance of reemployment, the written statement shall also inform the employee that he or she may file a claim for benefits and that the determination for eligibility for benefits is made by the Employment Development Department and not by the employer.

(4) If it is stated that the individual has reasonable assurance of reemployment, that the individual shall be entitled to a retroactive payment of benefits if the individual is not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, if the individual is otherwise eligible and he or she filed a claim for each week benefits are claimed, and if a claim for retroactive benefits is made no later than 30 days following the commencement of the second academic year or term.

SEC. 13. 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, and who was not paid any benefit amount as a result of his or her false statement or representation, is ineligible to receive unemployment compensation benefits for two weeks commencing with 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 13 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) An individual disqualified under subdivision (a) of Section 1257, under a determination transmitted to him or her by the department, and who was paid any benefit amount as a result of his or her false statement or representation, is ineligible to receive unemployment compensation benefits for five weeks commencing with 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 10 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.

(e) Notwithstanding subdivision (c) or (d), 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. 14. Section 1280 of the Unemployment Insurance Code is amended to read:

1280. (a) For any new claims filed with an effective date on or after January 1, 1990, an individual's weekly benefit amount is the amount appearing in column B in the following table opposite that wage bracket in column A which contains the amount of wages paid to the individual for employment by employers during the quarter of his or her base period in which his or her wages were the highest.

A Amount of wages in highest quarter	B Weekly benefit amount
$900.00– 948.99	40
949.00– 974.99	41
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(b) For new claims filed with an effective date beginning on or

after January 1, 1990, and prior to January 1, 1991, if the amount of wages paid an individual for employment by employers exceeds four thousand nine hundred sixty-six dollars and ninety-nine cents ($4,966.99) the quarter of his or her base period in which these wages were highest, the individual's weekly benefit amount shall be 39 percent of these wages divided by 13, but in no case shall this amount exceed one hundred ninety dollars ($190). If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(c) For new claims filed with an effective date beginning on or after January 1, 1991, and prior to January 1, 1992, if the amount of wages paid an individual for employment by employers exceeds four thousand nine hundred sixty-six dollars and ninety-nine cents ($4,966.99) in the quarter of his or her base period in which these wages were highest, the individual's weekly benefit amount shall be 39 percent of these wages divided by 13, but in no case shall this amount exceed two hundred ten dollars ($210). If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(d) For new claims filed with an effective date beginning on or after January 1, 1992, if the amount of wages paid an individual for employment by employers exceeds four thousand nine hundred sixty-six dollars and ninety-nine cents ($4,966.99) in the quarter of his or her base period in which these wages were highest, the individual's weekly benefit amount shall be 39 percent of these wages divided by 13, but in no case shall this amount exceed two hundred thirty dollars ($230). If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

SEC. 15. Section 1281 of the Unemployment Insurance Code is amended to read:

1281. (a) An individual cannot establish a valid claim or a benefit year during which any benefits are payable unless during his or her base period:

(1) For new claims filed with an effective date beginning on or after January 1, 1990, and prior to January 1, 1991, he or she has met one of the following conditions:

(A) He or she has been paid wages for employment by employers during the quarter of his or her base period in which his or her wages were the highest of not less than one thousand two hundred dollars ($1,200).

(B) He or she has been paid wages for employment by employers during the quarter of his or her base period in which his or her wages were the highest of not less than nine hundred dollars ($900) and been paid wages for employment by employers during his or her base period equal to 1.25 times the amount he or she was paid in this same quarter.

(2) For new claims filed with an effective date beginning on or after January 1, 1991, and prior to January 1, 1992, he or she has met

one of the following conditions:

(A) He or she has been paid wages for employment by employers during the quarter of his or her base period in which his or her wages were the highest of not less than one thousand two hundred fifty dollars ($1,250).

(B) He or she has been paid wages for employment by employers during the quarter of his or her base period in which his or her wages were the highest of not less than nine hundred dollars ($900) and been paid wages for employment by employers during his or her base period equal to 1.25 times the amount he or she was paid in this same quarter.

(3) For new claims filed with an effective date beginning on or after January 1, 1992, he or she has met one of the following conditions:

(A) He or she has been paid wages for employment by employers during the quarter of his or her base period in which his or her wages were the highest of not less than one thousand three hundred dollars ($1,300).

(B) He or she has been paid wages for employment by employers during the quarter of his or her base period in which his or her wages were the highest of not less than nine hundred dollars ($900) and been paid wages for employment by employers during his or her base period equal to 1.25 times the amount he or she was paid in this same quarter.

(b) Except as provided by subdivision (c) of this section, the maximum amount of unemployment compensation benefits payable to an individual during any one benefit year shall not exceed the lower of the following:

(1) Twenty-six times his or her weekly benefit amount.

(2) One-half the total wages paid to the individual during his or her base period.

(c) If the maximum amount computed under subdivision (b) is not a multiple of one dollar ($1) it shall be computed to the next higher multiple of one dollar ($1).

(d) For the purpose of this section and Section 1280, in determining wages paid, "wages" includes wages due to any individual but unpaid within the time limit provided by law.

SEC. 16. Section 1329 of the Unemployment Insurance Code is amended to read·

1329. Upon the filing of a new claim for benefits, the department shall promptly make a computation on the claim which shall set forth the maximum amount of benefits potentially payable during the benefit year, and the weekly benefit amount. The department shall promptly notify the claimant of the computation The department shall promptly notify each of the claimant's base period employers of the computation after the payment of the first weekly benefit.

SEC. 17. Section 1332 of the Unemployment Insurance Code is amended to read.

1332. (a) The department shall promptly serve notice of any

determination of eligibility for benefits under this part or Part 3 or Part 4 of this division on the claimant and on any employer or employing unit which prior to this determination has furnished the department with information regarding the claimant's eligibility pursuant to Sections 1327 and 1331. Service shall be made personally or by mail. Failure to serve this notice shall not affect the determination of eligibility.

(1) "Notice" is that notification which apprises the party of a determination of eligibility and allows that party to respond accordingly.

(2) If the department is or should be aware that the notice was not received by the party to whom it was addressed, including, but not limited to, the return to the department of the notice by the United States Post Office, the department shall reissue the notice at such time as the department can determine a corrected mailing address for the affected party or otherwise ensure receipt. The affected party shall have appeal rights pursuant to subdivisions (b) and (c), and pursuant to Section 1328.

(b) The department may for good cause reconsider any determination within 15 days after an appeal to an administrative law judge is filed. If no appeal is filed, the department may for good cause reconsider any determination within 20 days after mailing or personal service of the notice of determination. The department may, if a claimant has not filed an appeal to an administrative law judge from any determination which finds that a claimant is ineligible or disqualified, for good cause also reconsider the determination during the benefit year or extended duration period or extended benefit period to which the determination relates. The department shall give notice of any reconsidered determination to the claimant and any employer or employing unit which received notice under Sections 1328 and 1331 and the claimant or employer may appeal therefrom in the manner prescribed in Section 1328.

The director shall designate individuals to review and reconsider appealed determinations. No individual designated shall be the same individual who made the initial determination in the same matter.

(c) The department may for good cause reconsider any computation or recomputation provided for in this article during the benefit year or extended duration period to which the notice of computation or recomputation relates, except that no recomputation may be considered with respect to any issue considered or under consideration in an appeal taken from a denial of recomputation. The department shall promptly notify the claimant and each of the claimant's base period employers of the recomputation. The claimant and any base period employer may protest the accuracy of the recomputation as prescribed in Section 1330.

SEC 18 Section 1591 is added to the Unemployment Insurance Code, to read:

1591. It is the intent of the Legislature that the Budget Act for each fiscal year shall appropriate the entire amount available in the

Contingent Fund during the fiscal year for the purposes of this article.

SEC. 19. New claims filed with effective dates prior to January 1, 1990, shall be payable at the rate specified by Section 1280 of the Unemployment Insurance Code, and under conditions specified in Section 1281 of the Unemployment Insurance Code, prior to the enactment of this act.

SEC. 20. Tax rates provided by this act shall apply to contributions due during the 1990 calendar year and thereafter. Notwithstanding Section 977 of the Unemployment Insurance Code, for the 1990 calendar year only, employers shall pay into the Unemployment Fund contributions upon all wages with respect to employment at the rates specified in Schedule AA of subdivision (a) of Section 977 of the Unemployment Insurance Code.

CHAPTER 1147

An act to add Chapter 6.8 (commencing with Section 52080) and Chapter 6.9 (commencing with Section 52100) to Part 28 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. (a) It is the intent of the Legislature to implement over an eight-year period a state-local cost sharing program, which has the goal of attaining greater pupil proficiency made possible by a class size of 20 in high school courses taught by the English, mathematics, science, or social studies department to meet graduation requirements. The Legislature further recognizes the impracticality of imposing an absolute maximum of 20 pupils per class. Therefore, for the purposes of this act, classes taught by the English, mathematics, science, or social studies department to meet graduation requirements shall be reduced to an average of 20 pupils, per certificated teacher, per class. It is also the intent of the Legislature that school district governing boards shall have the option of implementing this program in their choice of grade levels and courses specified in the Program to Reduce Class Size in Grades 9 to 12, Inclusive, Chapter 6.8 (commencing with Section 52080) of Part 28 of the Education Code. The Legislature intends that this program not increase the need for additional classroom facilities, and that school district governing boards will add an extra period to the instructional day, if necessary, to implement the provisions of this program.

(b) It is further the intent of the Legislature to implement a

Language Arts Enrichment Program in Grades 1 to 3, Inclusive, to attain greater pupil proficiency in reading, writing, spelling, and speaking and listening. Incentive funding provided under this program would provide new direct instructional services to pupils for this purpose.

SEC. 2. Chapter 6.8 (commencing with Section 52080) is added to Part 28 of the Education Code, to read:

CHAPTER 6.8. PROGRAM TO REDUCE CLASS SIZE IN GRADES 9 TO 12, INCLUSIVE

52080. This chapter shall be known and may be cited as the Morgan-Hart Class Size Reduction Act of 1989.

52081. The following entities shall not be eligible to participate in the Program to Reduce Class Size in Grades 9 to 12, Inclusive:

(a) County boards of education.

(b) County superintendents of schools.

52082. Except as otherwise provided by subdivisions (a) and (b) of Section 52081, any school district that maintains any of grades 9 to 12, inclusive, may apply to the Superintendent of Public Instruction for an apportionment to implement a Program to Reduce Class Size in Grades 9 to 12, Inclusive.

52084. A school district's application to implement a program pursuant to this chapter shall comprise the following:

(a) Certification of the grade level to be included in the program for the first fiscal year of implementation, during which only one grade level may be certified, or, for any subsequent fiscal year, of the grade level to be added to the program, for the fiscal year for which funding is sought. No more than one additional grade level shall be added to the program in any one fiscal year. That grade level shall continue to be included in the program in subsequent fiscal years for which an apportionment is sought.

(b) Certification that all courses that count toward completion of the graduation requirements established in Section 51225.3 and that are taught in any of the English, mathematics, social studies, or science departments in the grade level or levels designated pursuant to subdivision (a) shall on the average be no more than 20 pupils, per certificated teacher, per class in the subject selected for state reimbursement. For the first fiscal year of funding for which a subject is chosen in a particular grade level, a school district may certify a pupil load that represents a 50-percent improvement toward the goal of an average of 20 pupils, per certificated teacher, per class for the 1988–89 fiscal year calculated by subject area selected for state funding. Once a department has been designated pursuant to this subdivision, it shall remain in the program as additional departments are added in subsequent fiscal years.

(c) Certification of pupil enrollment as of October of the prior fiscal year in each grade level designated pursuant to subdivision (a). For purposes of this subdivision, the enrollment figure shall equal

total enrollment minus the sum of the following:

(1) The number of special education pupils enrolled in special day classes on a full-time basis.

(2) The number of pupils enrolled in necessary small schools that receive funding pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24.

(d) If, in any subsequent fiscal year for which an apportionment is sought, the district certifies that the program in a particular grade level designated pursuant to subdivision (a) will be expanded to include courses required for graduation taught in the departments not previously designated pursuant to subdivision (b), the enrollment figure obtained pursuant to subdivision (c) for that grade level shall be increased proportionately for that fiscal year and each fiscal year thereafter for which an apportionment is sought.

(e) A district shall also certify, as a condition for the continued receipt of state apportionments pursuant to Section 52086, that the district has maintained all class size reductions accomplished through previous apportionments under this chapter. The district's certification shall include a statement that implementation of a class size reduction program pursuant to this chapter has not adversely affected existing class size in courses not referenced in this chapter.

(f) While it is the intent of the Legislature that this program not increase the need for additional classroom facilities, a school district may utilize any funds apportioned pursuant to Section 52086 for the purpose of leasing additional classroom space in order to reduce overcrowded classroom conditions and to reduce pupil-to-teacher ratios.

52086. (a) The Superintendent of Public Instruction shall apportion to each applicant district an amount equal to two hundred fifty dollars ($250) per unit of enrollment reported pursuant to subdivision (c) or (d) of Section 52084 if the district certifies an average class size of 20 pupils. If a district uses the alternate option of reducing class size via two stepdown increments pursuant to subdivision (b) of Section 52084, the district shall receive an amount equal to one hundred twenty-five dollars ($125) per unit of enrollment for each increment, which shall be increased to a total of two hundred fifty dollars ($250) commencing with the fiscal year in which the district certifies an average class size of 20 pupils.

(b) Funds apportioned pursuant to this section shall not become part of a district's revenue limit, and shall be identified as a separate item of expenditure on any financial reports filed by school districts with the state pursuant to statute or regulation.

52088. On or before November 1 of each year, the Superintendent of Public Instruction shall report to the Governor and to both houses of the Legislature regarding the number of districts that have implemented a program pursuant to this chapter, the grade levels involved in those programs, and the total amount of the state and local funds expended in the prior fiscal year for the programs.

52090. In any fiscal year, if the funds appropriated for the purposes of this chapter by the Budget Act are insufficient to fully fund the program pursuant to the formula established in Section 52086, the Superintendent of Public Instruction shall apportion the available funds on a pro rata basis by applying a deficit factor to the apportionment calculated for each applicant district pursuant to Section 52086.

SEC. 3. Chapter 6.9 (commencing with Section 52100) is added to Part 28 of the Education Code, to read:

CHAPTER 6.9. LANGUAGE ARTS ENRICHMENT PROGRAM IN GRADES 1 TO 3, INCLUSIVE

52100. There is hereby established the Language Arts Enrichment Program in Grades 1 to 3, Inclusive.

52102. "Language arts," for purposes of this chapter, means reading, writing, spelling, and speaking and listening.

52104. The following entities shall not be eligible to participate in the Language Arts Enrichment Program in Grades 1 to 3, Inclusive:

(a) County boards of education.

(b) County superintendents of schools.

52106. (a) Incentive funding for the Language Arts Enrichment Program in Grades 1 to 3, Inclusive, shall be apportioned in the following manner:

(1) For the 1989–90 fiscal year, the Superintendent of Public Instruction shall apportion to each applicant district an amount equal to thirty dollars ($30) per unit of enrollment.

(2) Enrollment in grades 1 to 3, inclusive, used to calculate district apportionments shall be certified as of October 1 of the prior fiscal year. This enrollment figure shall equal total enrollment minus the number of special education pupils enrolled in special day classes on a full-time basis.

(b) Funds apportioned pursuant to this section shall not become part of a district's revenue limit, and shall be identified as a separate item of expenditure on financial reports filed by school districts with the state pursuant to statute or regulation.

52108. Funding provided under this program shall be used to increase direct individual instruction in language arts to pupils.

52110. A school district shall, as part of its application for funding to implement the Language Arts Enrichment Program for Grades 1 to 3, Inclusive, submit a plan to the State Department of Education specifying how funds will be expended and how the district proposes to evaluate the success of the program.

52112. On or before November 1 of each year, the Superintendent of Public Instruction shall report to the Governor and to both houses of the Legislature regarding the number of districts that have implemented a program pursuant to this chapter, the grade levels involved in those programs, and the total amount of the state and local funds expended for the programs in the prior fiscal

year.

52114. In any fiscal year, if the funds appropriated for the purposes of this chapter by the Budget Act are insufficient to fund the programs fully pursuant to the formula established in Section 52106, the Superintendent of Public Instruction shall apportion the available funds on a pro rata basis by applying a deficit factor to the apportionment calculated for each applicant district.

SEC. 4. It is the intent of the Legislature that:

(a) Subsequent to the adjustment of the amount of the funding reserved pursuant to Section 12.31 of the Budget Act of 1989 to accurately reflect the state funding obligation under subdivision (b) of Section 8 of Article XVI of the California Constitution, funds be appropriated from that reserve for purposes of deficiency allocation for kindergarten and grades 1 to 12, inclusive, pursuant to Section 27 of the Budget Act of 1989.

(b) Following the adjustment and appropriation described in subdivision (a), up to one hundred ten million dollars ($110,000,000) be appropriated from the amount reserved under Section 12.31 of the Budget Act of 1989, to be allocated as follows:

(a) The first forty million dollars ($40,000,000) to be allocated for the purposes of the Program to Reduce Class Size in Grades 9 to 12, Inclusive, pursuant to Chapter 6.8 (commencing with Section 52080) of Part 28 of the Education Code.

(b) The remaining seventy million dollars ($70,000,000) to be allocated for the purposes of the Language Arts Enrichment Program in Grades 1 to 3, Inclusive, pursuant to Chapter 6.9 (commencing with Section 52100) of Part 28 of the Education Code and the Program to Reduce Class Size in Grades 9 to 12, Inclusive, pursuant to Chapter 6.8 (commencing with Section 52080) of Part 28 of the Education Code in increments of five million dollars ($5,000,000). The Language Arts Enrichment Program in Grades 1 to 3, Inclusive, pursuant to Chapter 6.9 (commencing with Section 52100) of Part 28 of the Education Code, is to receive the first five million dollar ($5,000,000) allocation and the Program to Reduce Class Size in Grades 9 to 12, Inclusive, pursuant to Chapter 6.8 (commencing with Section 52080) of Part 28 of the Education Code, is to receive the second five million dollar ($5,000,000) allocation. The remaining funding is to be allocated in the same order. If available funds are insufficient to provide a full increment of five million dollars ($5,000,000) to a program, the available amount is to be allocated.

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 implement the programs created by this bill, it is necessary that this act take effect immediately.

CHAPTER 1148

An act to amend Section 800 of, and to add Section 805 to, the Elections Code, relating to elections.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 800 of the Elections Code is amended to read:

800. (a) The county clerk shall conduct a preelection residency confirmation procedure as provided in this article. That procedure shall be initiated by mailing a nonforwardable postcard to each registered voter of the county preceding the direct primary election. Postcards mailed pursuant to this article shall be sent "Address Correction Requested, Return Postage Guaranteed," and shall be in substantially the following form:

"We are requesting your assistance in correcting the addresses of voters who have moved and have not reregistered.

1. If you still live at the address noted on this postcard, your voter registration will remain in effect and you may disregard this notice.

2. If the person named on this postcard is not at this address, please return this postcard to your mail carrier."

(b) The county clerk, at his or her discretion, shall not be required to mail a residency confirmation postcard pursuant to subdivision (a), to any voter who has voted at an election held within the last six months preceding the start of the confirmation procedure.

(c) The county clerk, in lieu of mailing a residency confirmation postcard pursuant to subdivision (a) to conduct the preelection residency confirmation procedure as provided in this article, may use the change-of-address data services of the United States Postal Service obtained pursuant to Section 805.

SEC. 2. Section 805 is added to the Elections Code, to read:

805. The county clerk may contract with the United States Postal Service or its licensee to obtain use of postal service change-of-address data, such as the National Change of Address System and Operation MAIL. The clerk shall send a notice in substantially the following form to registered voters who, based on the data obtained from the postal service, have changed their addresses:

"Important Voter Registration Information

You have recently filed a change-of-address notice with the United States Postal Service.

We will reregister you at your new address unless, within 15 days, you notify us that your change of address is not a change of your

permanent residence."

The notice shall include either a prepaid return notice to the clerk or a toll-free telephone number where the voter may notify the clerk that the change of address is not a change of permanent residence.

CHAPTER 1149

An act to add Section 21008.3 to, and to add Chapter 6 (commencing with Section 21701) to Part 1 of Division 9 of, the Public Utilities Code, relating to airports.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 21008.3 is added to the Public Utilities Code, to read.

21008.3. "Division" means the Division of Aeronautics in the department.

SEC. 2. Chapter 6 (commencing with Section 21701) is added to Part 1 of Division 9 of the Public Utilities Code, to read:

CHAPTER 6. AIRPORT PLANNING

21701 The division, in consultation with transportation planning agencies as designated by the director pursuant to Section 29532 of the Government Code, shall prepare a California Aviation System Plan, which shall include, but not be limited to, every California airport designated in the federal National Plan of Integrated Airport Systems and any other existing or proposed public use airports, as designated by the division.

21702 The California Aviation System Plan shall include, but not be limited to, all of the following elements:

(a) A background and introduction element, which summarizes aviation activity in California and establishes goals and objectives for aviation improvement.

(b) An air transportation issues element, which addresses issues such as aviation safety, airport noise, airport ground access, transportation systems management, airport financing, airport comprehensive land use planning, and institutional relationships.

(c) A regional plan alternative element, which consists of the aviation elements of the regional transportation plans prepared by each transportation planning agency. This element shall include consideration of regional air transportation matters relating to growth, capacity needs, county activity, airport activity, and systemwide activity in order to evaluate adequately the overall impacts of regional activity in relation to the statewide air

transportation system. This element shall propose general aviation and air carrier public use airports for consideration by the commission for funding eligibility under this chapter.

(d) A state plan alternative element, which includes consideration of statewide air transportation matters relating to growth, including, but not limited to, county activity, airport activity, and systemwide activity in order to evaluate adequately the state aviation system and to designate an adequate number of general aviation and air carrier public use airports for state funding in order to provide a level of air service and safety acceptable to the public.

(e) A comparative element, which compares and contrasts the regional plan alternative with the state plan alternative, including, but not limited to, airport noise, air quality, toxic waste cleanup, energy, economics, and passengers served.

(f) A 10-year capital improvement program, which is divided into two five-year phases for each airport, based on the airport's adopted master plan, prepared by each transportation planning agency, and submitted to the division for inclusion in the California Aviation System Plan.

(g) Any other element deemed appropriate by the division and the transportation planning agencies.

(h) A summary and conclusion element, which presents the findings and recommended course of action.

21703. The division shall submit the California Aviation System Plan to the commission.

21704. The division, in consultation with the transportation planning agencies, shall biennially revise the capital improvement program developed pursuant to subdivision (f) of Section 21702, and the division shall submit the revised program to the commission. The division, in consultation with the transportation planning agencies, shall revise all other elements of the California Aviation System Plan every five years, and shall submit the revised plan to the commission.

21705. The commission shall review, hold public hearings on, and, based on these hearings, adopt or revise and adopt as revised, the California Aviation System Plan and its subsequent revisions.

21706. The division shall require that every project submitted for funding from the Aeronautics Account in the State Transportation Fund shall be consistent with the California Aviation System Plan. Applications for funding shall be processed in accordance with the procedures adopted by the commission for processing applications by local entities for projects included in the state transportation improvement program, to the extent those procedures may be applicable. In determining the priorities of projects, the division shall, and the transportation planning agencies may, utilize the methodology adopted by the commission for determining the priorities of projects listed in the aviation element of the state transportation improvement program.

21707. Any funds necessary to carry out this chapter shall be obtained from federal grants.

CHAPTER 1150

An act to repeal Section 11003.1 of the Business and Professions Code, and to amend Section 1351 of the Civil Code, relating to common interest developments.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 11003.1 of the Business and Professions Code is repealed.

SEC. 2. Section 1351 of the Civil Code is amended to read:

1351. As used in this title, the following terms have the following meanings:

(a) "Association" means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

(b) "Common area" means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(c) "Common interest development" means any of the following:

(1) A community apartment project.

(2) A condominium project.

(3) A planned development.

(4) A stock cooperative.

(d) "Community apartment project" means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

(e) "Condominium plan" means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the record owner of fee title to that property included in the condominium project. In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years and, in the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests. The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required to record a condominium plan pursuant to this subdivision.

(f) A "condominium project" means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

(g) "Declarant" means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

(h) "Declaration" means the document, however denominated, which contains the information required by Section 1353.

(i) "Exclusive use common area" means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

(1) Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(2) Notwithstanding the provisions of the declaration, internal

and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(j) "Governing documents" means the declaration and any other documents, such as bylaws, operating rules of the association, articles of incorporation, or articles of association, which govern the operation of the common interest development or association.

(k) "Planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separately owned lot, parcel, or area in accordance with Section 1367.

(*l*) "Separate interest" has the following meanings:

(1) In a community apartment project, "separate interest" means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, "separate interest" means an individual unit, as specified in subdivision (f).

(3) In a planned development, "separate interest" means a separately owned lot, parcel, area, or space.

(4) In a stock cooperative, "separate interest" means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common areas.

The estate in a separate interest may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(m) "Stock cooperative" means a development in which a corporation is formed or availed of primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners' interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate

development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

A "stock cooperative" includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.

CHAPTER 1151

An act to amend Section 640 of, and to add Section 1463 29 to, the Penal Code, and to amend Section 332 of the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 640 of the Penal Code is amended to read:

640. (a) Any of the following acts committed on or in the facilities or vehicles of a public transportation system as defined by Section 99211 of the Public Utilities Code, on or in the facilities of, or vehicles operated by entities subsidized by, the Department of Transportation is an infraction punishable by a fine not to exceed two hundred fifty dollars ($250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment:

(1) Evasion of the payment of the fares of the system.

(2) Misuse of transfers, passes, tickets, or tokens with the intent to evade the payment of fares.

(3) Playing sound equipment on or in system facilities or vehicles.

(4) Smoking, eating, or drinking in or on system facilities or vehicles in those areas where those activities are prohibited by that system.

(5) Expectorating upon system facilities or vehicles.

(6) Willfully disturbing others on or in system facilities or vehicles by engaging in boisterous or unruly behavior.

(7) Writing, spraying, scratching, or otherwise affixing of graffiti on or in system facilities or vehicles. If a minor is personally unable to pay any fine levied for violating this paragraph, the parent or legal guardian of the minor shall be liable for payment of the fine. A court may waive payment of the fine by the parent or legal guardian upon a finding of good cause.

(b) Any fine levied for a violation of paragraph (7) of subdivision (a) shall be credited by the county treasurer pursuant to Section 1463.29 to the public transportation system or entity having jursidiction over the facility or vehicle involved to be used for removal of the graffiti.

Any community service which is required pursuant to subdivision (a) of a person under the age of 18 years may be performed in the presence, and under the direct supervision, of the person's parent or legal guardian.

(c) As used in this section, graffiti means any form of unauthorized painting, writing, or inscription regardless of the content or nature of the material used in the commission of the act.

SEC. 2. Section 1463.29 is added to the Penal Code, to read:

1463.29. Notwithstanding Section 1463, out of the moneys deposited with the county treasurer pursuant to Section 1463, there shall be credited, once a month, to the public transportation system or entity having jurisdiction over facilities or vehicles specified in Section 640, fines levied for violations of paragraph (7) of subdivision (a) of Section 640 and for the purposes specified in subdivision (b) of that section.

SEC. 3. Section 332 of the Welfare and Institutions Code is amended to read:

332. A petition to commence proceedings in the juvenile court to declare a minor a ward or a dependent child of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and the subdivision under which the proceedings are instituted. If it is alleged that the minor is a person described by subdivision (e) of Section 300, the petition shall include an allegation pursuant to that section.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to the petitioner, of both parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to the petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there is none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, of all of the following: (1) Section 903 makes that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an

order of the juvenile court; (2) Section 903.1 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor or the parent by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

(i) If a proceeding is pending against a minor child for a violation of paragraph (7) of subdivision (a) of Section 640 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated that provision that (1) any community service which may be required of the minor may be performed in the presence, and under the direct supervision, of the parent or legal guardian pursuant to subdivision (b) of Section 640 of the Penal Code; and (2) if the minor is personally unable to pay any fine levied for the violation of paragraph (7) of subdivision (a) of Section 640 of the Penal Code, that the parent or legal guardian of the minor shall be liable for payment of the fine pursuant to that paragraph.

SEC. 4. 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 penalty for a crime or infraction, changes the definition of a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide costs of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1152

An act to add and repeal Section 1349.2 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 1349.2 is added to the Health and Safety Code, to read·

1349.2. (a) A health care service plan operated by any city, county, city and county, public entity, or political subdivision which satisfies all of the following criteria is exempt from Section 1349:

(1) Provides services only to its employees, their dependents, and retirees, but not to the general public.

(2) Provides funding for the program.

(3) Provides that providers are not at risk in contracting arrangements, that is, that the reimbursement system is on a fee-for-service basis.

(b) The Senate Office of Research shall conduct a study of the factors which should be considered by the Legislature in determining whether to create an exemption, and the scope of the exemption, under this chapter for public entities and political subdivisions operating a health care service plan for their employees, retired employees, and their dependents which satisfies all of the conditions set forth in subdivision (a). The study shall include, but not be limited to, evaluation of all of the following:

(1) An estimate of the number of public entity and political subdivision plans which would be affected by an exemption.

(2) The fiscal impact of licensure on public entities and political subdivisions and upon the regulatory authority, including any increase in public entity or regulatory authority employees needed to comply with licensure.

(3) The impact, if any, on services offered by the plan due to costs associated with regulation, including any unintended results of creating barriers to health care.

(4) Any potential concomitant increase in taxes in order for public entities and political subdivisions to provide health care services.

(5) If the plans are not licensed and monitored, any risks of financial insolvency, inadequate benefit packages, inadequate education of enrollees of plans concerning available benefits and services, appeal rights, or of economic stability of the plan; and any adverse impact on the ability of enrollees of plans to obtain quality health care, including barriers to accessibility and claims payment practices.

(6) The impact on the private sector, including physicians, allied health providers, and hospitals.

(7) The impact on health care service plans from any increase in enrollee assessments to fund the regulatory authority's efforts in licensing public entities and political subdivisions.

(8) The impact and effect of competition on private sector plans from licensed public entities and political subdivisions.

(9) Any constitutional barriers precluding the operation or a health care service plan by a joint exercise of powers agreement pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code.

In conducting the study, the Senate Office of Research shall seek assistance and input from all interested parties. The study shall be completed and submitted to the Legislature no later than December 31, 1991.

(c) It is the intent of the Legislature that the Senate Office of Research study shall provide relevant factual and legal information which may assist the Legislature in determining whether, and to what extent, a permanent exemption for public entity and political subdivision employee plans would be in the public interest and not detrimental to the protection of subscribers, enrollees, or persons regulated under this chapter, and the extent to which regulation of those plans is not essential to the purposes of this chapter.

It is therefore the intent of the Legislature that the temporary exemption in subdivision (a) is to alleviate the necessity for the Department of Corporations to commence enforcement actions against those plans solely because they are unlicensed during this period.

(d) During the time period of temporary exemption, any public entity or political subdivision operating a health care service plan pursuant to subdivision (a) shall not engage in any actions which are contrary to Sections 1378 and 1379 and shall not reduce or change current benefits except in accordance with collecting bargaining agreements existing on the effective date of this section.

(e) This section shall remain in effect only until December 31, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before December 31, 1992, deletes or extends that date.

CHAPTER 1153

An act to amend Section 116.4 of, and to add Section 116.41 to, the Code of Civil Procedure, relating to small claims court.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 116.4 of the Code of Civil Procedure is amended to read:

116.4. (a) An action shall be commenced by the plaintiff's filing, in person or by mail with the judge or clerk of the small claims division, a claim under oath setting forth: the name and address of the defendant, the amount and the basis of the claim; and that the plaintiff has demanded payment and, in applicable cases, the possession of the property; that the defendant has failed or refused to pay, and where applicable, has refused to surrender the premises; and that the plaintiff understands that the judgment on his or her claim will be conclusive without right of appeal by him or her.

(b) The judge or clerk shall thereupon do either of the following:

(1) The judge or clerk shall (A) sign an order directing a defendant who resides within the county in which the action is filed, to appear on a hearing date not more than 40 days nor less than 15 days from the date of the order or, if the defendant resides outside of the county in which the action is filed, to appear on a hearing date not more than 70 days nor less than 30 days from the date of the order, (B) cause a copy of the claim and order to be mailed to the defendant by any form of mail providing for a return receipt, or cause a copy to be delivered to defendant in person, and (C) inform the plaintiff of a specified hearing date and direct him or her to appear on that date with witnesses and documents to prove his or her claim.

(2) The judge or clerk shall (A) cause a copy of any claim to be mailed to the defendant by any form of mail providing for a return receipt or cause a copy to be delivered to defendant in person, (B) upon proof of service in accordance with subparagraph (A), sign an order setting a hearing date for a defendant who resides within the county in which the action is filed of not more than 40 days nor less than 15 days from the date of receipt of proof of service or, if the defendant resides outside of the county in which the action is filed, a hearing date of not more than 70 days nor less than 30 days from the date of receipt of service, (C) cause a copy of the order setting the hearing date and directing the defendant to appear on that date to be served upon the defendant as provided in subparagraph (A), and (D) cause a copy of the order setting the hearing date and directing the plaintiff to appear on that date with witnesses and documents to prove his or her claim to be served upon the plaintiff

as provided in subparagraph (A).

(c) Service by these methods shall be deemed complete on the date of personal service, or on the date that the defendant signs the mail return receipt, or upon the presentation of other competent evidence to the court, whichever is applicable. Service of a copy of the claim and order may also be made and shall be complete, as provided in subdivision (a) or (b) of Section 415.20, without requirement for attempted service by either of the methods above provided, and shall be complete as provided in Section 415.20. Except for personal service upon the owner of record of real property in California, who resides in another state and who has no lawfully designated agent in California for service of process, of a complaint relative to that real property, service to be valid must be made within this state.

(d) If, in the case of paragraphs (1) and (2) of subdivision (b), the service of the claim and order upon the defendant is not completed at least 10 days prior to the hearing date where the defendant resides within the county in which the action is brought, or at least 15 days prior to the hearing date where the defendant resides outside the county in which the action is brought, unless the defendant personally appears and does not request a continuance, the court shall continue the date for the hearing for at least 15 days, and shall cause notice thereof by first-class mail to be served on any defendant who has been served but did not personally appear.

SEC. 2. Section 116.41 is added to the Code of Civil Procedure, to read:

116.41. Any party may submit a written request for continuance of a hearing date. When the court finds that it would best serve the interests of justice, the court shall continue the date for the hearing for at least 15 days, and shall cause notice thereof by first-class mail to be served on all plaintiffs and defendants.

SEC 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1154

An act to amend Sections 9886.2 and 9889.75 of the Business and Professions Code, to amend Sections 43205, 44001.5, 44003, 44012, 44014, 44017, 44019, 44031.5, 44034, 44036, and 44060 of, and to add Sections 43008.6, 44034.1, and 44036.5 to, the Health and Safety Code, and to amend Sections 4000.1 and 4000.2 of the Vehicle Code, relating to air pollution.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 9886.2 of the Business and Professions Code is amended to read:

9886.2. The money in the Vehicle Inspection and Repair Fund necessary for the administration of this chapter and Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code is available to the department, when appropriated for those purposes. The money in the Certification Account, which is hereby created in the Vehicle Inspection and Repair Fund, shall be available pursuant to Chapter 20.5 (commencing with Section 9889.70).

SEC. 2. Section 9889.75 of the Business and Professions Code is amended to read:

9889.75. The New Motor Vehicle Board in the Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.

(a) Fees collected pursuant to this section shall be deposited in the Certification Account in the Vehicle Inspection and Repair Fund and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the bureau in administering this chapter. If, at the conclusion of any fiscal year, the amount of fees collected exceeds the amount of expenditures for that purpose during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.

(b) Beginning July 1, 1988, and on or before May 1 of each calendar year thereafter, every manufacturer shall file with the New Motor Vehicle Board a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year, and shall, upon written notice delivered to the manufacturer by certified mail, return receipt requested, pay to the New Motor Vehicle Board a fee, not to exceed one dollar ($1) for each motor vehicle sold, leased, or distributed by or for the manufacturer in this state during the preceding calendar year. The total fee paid by each manufacturer shall be rounded to the nearest dollar in the manner described in

Section 9559 of the Vehicle Code. Not more than one dollar ($1) shall be charged, collected, or received from any one or more manufacturer pursuant to this subdivision with respect to the same motor vehicle.

(c) (1) The fee required by subdivision (b) is due and payable not later than 30 days after the manufacturer has received notice of the amount due and is delinquent after that time. A penalty of 10 percent of the amount delinquent shall be added to that amount, if the delinquency continues for more than 30 days.

(2) If a manufacturer fails to file the statement required by subdivision (b) by the date specified, the New Motor Vehicle Board shall assess the amount due from the manufacturer by using, as the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year, the total number of new registrations of all motor vehicles sold, leased, or otherwise distributed by or for the manufacturer during the preceding calendar year.

(d) On or before February 1 of each year, the bureau shall notify the New Motor Vehicle Board of the dollar amount necessary to fully fund the program established by this chapter during the following fiscal year. The New Motor Vehicle Board shall use this information in calculating the amounts of the fees to be collected from manufacturers pursuant to this section.

(e) For purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(f) The New Motor Vehicle Board may adopt regulations to implement this section. The regulations shall include, at a minimum, a formula for calculating the fee, established pursuant to subdivision (b), for each motor vehicle and the total amount of fees to be collected from each manufacturer.

SEC. 2.5. Section 9889.75 of the Business and Professions Code is amended to read:

9889.75. The New Motor Vehicle Board in the Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.

(a) Fees collected pursuant to this section shall be deposited in the Certification Account in the Vehicle Inspection and Repair Fund and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the bureau in administering this chapter and to pay the New Motor Vehicle Board as provided in Section 3016 of the Vehicle Code. If at the conclusion of any fiscal year the amount of fees collected exceeds the amount of expenditures for that purpose during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.

(b) Beginning July 1, 1988, and on or before May 1 of each calendar year thereafter, every manufacturer shall file with the New Motor Vehicle Board a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year, and shall, upon written notice delivered to the manufacturer by certified mail, return receipt requested, pay to the New Motor Vehicle Board a fee, not to exceed one dollar ($1) for each motor vehicle sold, leased, or distributed by or for the manufacturer in this state during the preceding calendar year. The total fee paid by each manufacturer shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code. Not more than one dollar ($1) shall be charged, collected, or received from any one or more manufacturers pursuant to this subdivision with respect to the same motor vehicle.

(c) (1) The fee required by subdivision (b) is due and payable not later than 30 days after the manufacturer has received notice of the amount due and is delinquent after that time. A penalty of 10 percent of the amount delinquent shall be added to that amount, if the delinquency continues for more than 30 days.

(2) If a manufacturer fails to file the statement required by subdivision (b) by the date specified, the New Motor Vehicle Board shall assess the amount due from the manufacturer by using as the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year the total number of new registrations of all motor vehicles sold, leased, or otherwise distributed by or for the manufacturer during the preceding calendar year.

(d) On or before February 1 of each year, the bureau shall notify the New Motor Vehicle Board of the dollar amount necessary to fully fund the program established by this chapter during the following fiscal year. The New Motor Vehicle Board shall use this information in calculating the amounts of the fees to be collected from manufacturers pursuant to this section.

(e) For purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(f) The New Motor Vehicle Board may adopt regulations to implement this section. The regulations shall include, at a minimum, a formula for calculating the fee, established pursuant to subdivision (b), for each motor vehicle and the total amount of fees to be collected from each manufacturer.

SEC. 3. Section 43008.6 is added to the Health and Safety Code, to read:

43008.6. (a) Notwithstanding Section 43012, for the purpose of enforcing or administering Section 27156 of the Vehicle Code, the executive officer of the state board or an authorized representative

of the executive officer, upon presentation of credentials or, if necessary under the circumstances, after obtaining a warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, has the right of entry to any premises owned, operated, used, leased, or rented by an owner or operator of any vehicle operated for commercial purposes in order to inspect any such motor vehicle, secure emission samples therefrom, or inspect and copy any maintenance, use, or other records pertaining to that vehicle.

(b) The state board may collect a civil penalty not to exceed one thousand five hundred dollars ($1,500) for each violation of Section 27156 of the Vehicle Code. Any penalties shall be paid to the Treasurer for deposit in the Air Pollution Control Fund.

(c) The civil penalty specified in subdivision (b) may be collected for one or more violations involving the tampering with or disabling of a gasoline-powered vehicle's air injection, exhaust gas recirculation, crankcase ventilation, fuel injection, carburetion, ignition timing, or evaporative control system, fuel filler neck restrictor, oxygen sensor or related electronic controls, or catalytic converter, or for the use of leaded fuel in a vehicle certified for the use of unleaded fuel only.

(d) The civil penalty specified in subdivision (b) may not be collected for a violation that is related to any tampering or disabling of a gasoline-powered vehicle specified in subdivision (c) by a rental customer of that vehicle, including, but not limited to, a missing gasoline filler cap and a disconnected or missing heated air intake tube or vacuum hose. However, if more than 20 percent of an owner's or operator's gasoline-powered vehicles are found to be nonconforming during each of three consecutive inspections conducted 30 or more days apart during any one-year period, the civil penalty specified in subdivision (b) applies and shall be collected for each time a vehicle is found in a nonconforming condition.

SEC. 4. Section 43205 of the Health and Safety Code is amended to read:

43205. (a) Commencing with the 1990 model-year, the manufacturer of each light-duty and medium-duty motor vehicle and motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or motor vehicle engine meets all of the following requirements.

(1) Is designed, built, and equipped so as to conform with the applicable emissions standards specified in this part.

(2) Is free from defects in materials and workmanship which cause the motor vehicle or motor vehicle engine to fail to conform with applicable requirements specified in this part for three years or 50,000 miles, whichever first occurs.

(3) Will, for a period of three years or 50,000 miles, whichever first occurs, pass a test established under Section 44012, but that the warranty shall not apply if the manufacturer demonstrates that the

failure of the motor vehicle or motor vehicle engine to pass the test was directly caused by the abuse, neglect, or improper maintenance or repair of the vehicle or engine.

(4) Is free from defects in materials and workmanship in emission related parts which, at the time of certification by the state board, are estimated by the manufacturer to cost individually more than three hundred dollars ($300) to replace, for a period of seven years or 70,000 miles, whichever first occurs.

(b) The state board shall, by regulation, periodically revise the three hundred dollar ($300) replacement cost level specified in paragraph (4) of subdivision (a) in accordance with the consumer price index, as published by the United States Bureau of Labor Statistics.

(c) For purposes of this section and Sections 43204 and 43205.5, a motorcycle is not a light-duty vehicle.

SEC. 5. Section 44001.5 of the Health and Safety Code is amended to read:

44001.5. (a) There is in the Department of Consumer Affairs a Bureau of Automotive Repair under the supervision and control of the director. A duty of enforcing and administering this chapter is vested in the chief of the bureau who is responsible to the director.

(b) The department shall take those actions consistent with its statutory authority to ensure that the reduction in vehicle emissions of hydrocarbons and carbon monoxide is 25 percent or more, and the reduction in vehicle emissions of oxides of nitrogen is 10 percent or more, than would have occurred without a motor vehicle inspection program. The department shall endeavor to achieve these vehicle emission reductions as expeditiously as practicable, but not later than January 1, 1994.

(c) In areas of the state where testing for oxides of nitrogen vehicle emissions is conducted pursuant to subdivision (b) of Section 44003, the department shall take all actions to ensure that the reduction in vehicle emissions of hydrocarbons is 40 percent or more, the reduction in carbon monoxide vehicle emissions is 25 percent or more, and the reduction in oxides of nitrogen vehicle emissions is 20 percent or more, than would have occurred without a motor vehicle inspection program. The department shall endeavor to achieve these vehicle emission reductions as expeditiously as practicable, but not later than four years after the commencement of testing for oxides of nitrogen vehicle emissions pursuant to subdivision (b) of Section 44003.

SEC. 6. Section 44003 of the Health and Safety Code is amended to read:

44003. (a) Any district may request the department to implement within its area of jurisdiction a motor vehicle inspection program which meets the requirements of this chapter. The area subject to the program shall include the entire urbanized area as defined by the United States Bureau of the Census in which any violation of ambient air quality standards related to motor vehicle

emissions exists and any other areas within the district specified by the requesting district or determined by the state board, in consultation with the districts, to contribute to violations of the ozone or carbon monoxide air quality standards in the district or in an adjacent district.

(b) At the time of the initial request pursuant to subdivision (a), or at any time thereafter, testing for oxides of nitrogen emissions shall be included at the option of the district requesting the program or upon a determination by the state board, after a hearing held within the district, that testing for oxides of nitrogen emissions will contribute to improved air quality.

(c) If testing for oxides of nitrogen emissions is requested pursuant to subdivision (b), the department shall implement a testing program within the district as soon as the department can develop a procedure for testing for oxides of nitrogen emissions that will be feasible and more effective than the testing program existing in 1988. The implementation date for testing for oxides of nitrogen emissions shall be the earliest date which provides sufficient lead time for the development, production, and installation of testing equipment. The department shall endeavor to implement testing within two years of the district's request. If the department determines that more time is required, the department shall provide the district with a detailed implementation schedule and shall periodically report to the district on the progress being made to implement testing.

SEC. 7. Section 44012 of the Health and Safety Code is amended to read.

44012. The test at the smog check stations shall include all of the following:

(a) A determination that emission control devices and systems required by state and federal law are installed and functioning correctly in accordance with the test procedure adopted pursuant to subdivision (b) of Section 44013.

(b) A preconditioning of the motor vehicle to ensure representative and stabilized operation of the vehicle's emission control system.

(c) For other than diesel-powered vehicles, a test of the vehicle's exhaust emissions of hydrocarbons, carbon monoxide, and carbon dioxide in an idle mode or loaded mode in accordance with the procedure prescribed by the department. Testing for oxides of nitrogen emissions shall be included if the district has requested testing for oxides of nitrogen and the department has implemented a testing program pursuant to Section 44003.

(d) For diesel-powered vehicles when the department determines that the inclusion of those vehicles is technologically and economically feasible, a test of the vehicle's exhaust emissions in an idle mode or loaded mode in accordance with the procedure prescribed by the department. The test may include testing of emissions of any or all of the pollutants specified in subdivision (c)

and, upon the adoption of applicable standards, measurement of emissions of smoke or particulates, or both.

(e) A determination as to whether the motor vehicle complies with the emission standards for that vehicle's class and model-year as prescribed by the department.

SEC. 8. Section 44014 of the Health and Safety Code is amended to read:

44014. (a) The testing and repair portion of the program shall be conducted by smog check stations licensed by the department, and by smog check mechanics who have qualified pursuant to this chapter.

(b) A smog check station may be licensed by the department as a smog check test only station and, when so licensed, need not comply with the requirement for onsite availability of current service and adjustment procedures specified in paragraph (3) of subdivision (b) of Section 44030. A smog check mechanic employed by a smog check test only station shall be qualified in accordance with this section.

(c) Smog check mechanics are qualified to test and repair only those classes and categories of vehicles for which they have passed a qualification test administered by the department. The department shall provide for smog check mechanics to be qualified for different categories of motor vehicle inspection based on vehicle classification and model-year.

(d) The consumer protection-oriented quality assurance portion of the program, shall be conducted by more than one private entity pursuant to contracts with the department.

SEC. 9. Section 44017 of the Health and Safety Code is amended to read:

44017. (a) The department shall set cost limitations for repairs required under the program, including parts and labor. On and after January 1, 1990, the cost limitations shall be as follows:

(1) For motor vehicles of 1971 and earlier model-years, fifty dollars ($50).

(2) For motor vehicles of 1972 to 1974, inclusive, model-years, ninety dollars ($90).

(3) For motor vehicles of 1975 to 1979, inclusive, model-years, one hundred twenty-five dollars ($125).

(4) For motor vehicles of 1980 to 1989, inclusive, model-years, one hundred seventy-five dollars ($175).

(5) For motor vehicles of 1990 and later model-years, three hundred dollars ($300).

(b) The department shall periodically revise the cost limitations specified in subdivision (a) in accordance with changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics. No limit shall be imposed in those cases where emissions control equipment is missing or is partially or totally inoperative as a result of tampering.

(c) The review committee established pursuant to Section 44021

shall prepare and submit to the Legislature on or before December 31, 1992, a report on the effect of the cost limitations established in subdivision (a) on reductions in air pollution accomplished pursuant to this chapter and on the extent of compliance with motor vehicle registration laws.

SEC. 10. Section 44019 of the Health and Safety Code is amended to read:

44019. (a) Every public agency, including, but not limited to, a publicly owned public utility, owning or operating any motor vehicle that is exempt from annual renewal of registration, and is otherwise subject to this chapter, shall obtain for the vehicle a certificate of compliance with the same frequency as is required for vehicles subject to renewal of registration. The cost limitations specified in Section 44017 do not apply to any vehicle owned or operated by a public agency.

(b) Certificates of compliance required by subdivision (a) shall be issued if the vehicle meets the requirements of Section 44012 using a test analyzer system meeting the requirements of the department. Any certificate so issued shall be indexed by vehicle license plate number or vehicle identification number and retained by the public agency for not less than three years, and shall be available for inspection by the department.

(c) Every public agency subject to subdivision (a) shall annually report to the department the number of certificates issued, the number of motor vehicles owned, and the schedule under which the motor vehicles were issued certificates of compliance.

(d) The department may accept proof of compliance with this section other than by a certificate of compliance.

SEC. 11. Section 44031.5 of the Health and Safety Code is amended to read:

44031.5. (a) No smog check mechanic may perform tests or make repairs required by this chapter, for compensation, unless qualified by the department for the class and category of vehicle being tested or repaired. To qualify, smog check mechanics shall pass a qualification test administered by the department in addition to meeting minimum experience and training criteria established by the department. Passage of the qualification test shall also be required upon each biennial renewal of the smog check mechanic's license.

(b) No person may perform the duties of a licensed inspector, including, but not limited to, the signing of certificates, unless that person is licensed and has met the requirements of subdivision (b) of Section 44031. This subdivision applies to every licensed inspector upon the first renewal of the inspector's license after January 1, 1988, and upon each renewal thereafter.

(c) The department shall prescribe training and periodic retraining courses for licensed inspectors and for smog check mechanics.

(d) Whenever the department determines, through

investigation, that a previously qualified smog check mechanic may lack the skills to reliably and accurately perform the test or repair functions within the required qualification, it may prescribe for the mechanic one or more retraining courses which have been certified by the department. The smog check mechanic may request and be granted a hearing, pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, on the department's determination. The request for a hearing shall be submitted within 30 days of the department's notification of its determination. A failure to complete the prescribed retraining course within the time designated by the department, or to request a hearing within 30 days of the department's notification of its determination, shall result in loss of qualification. Upon a later completion of the prescribed department certified retraining course, the department may reinstate the smog check mechanic's qualification.

(e) Smog check mechanics shall have the option to do hands-on work in lieu of written work in order to successfully complete the department certified training and retraining courses. The institution administering the department certified training or retraining courses shall issue a certificate of completion to each person successfully completing the certified courses. The certificate shall be valid for two years.

(f) There is hereby created a training course advisory board to assist and advise the department in recommending the form and content of training courses. The advisory board shall consist of five members appointed by the director, of whom two shall represent smog check station owners or managers, two shall represent smog check mechanics, and one shall be a public member. The members of the advisory board shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses in performing their duties under this subdivision.

SEC. 12. Section 44034 of the Health and Safety Code is amended to read:

44034. Annual license fees for smog check stations and biennial license fees for smog check mechanics may be imposed by the department, but shall not exceed the reasonable cost of administering the qualifications and licensing program.

SEC. 13. Section 44034.1 is added to the Health and Safety Code, to read:

44034.1. The department may impose an examination fee for smog check mechanic initial and biennial renewal applicants. Payment of the fee entitles the applicant to be scheduled for an examination. If the applicant fails to pass the examination or fails to appear for the examination, the applicant shall forfeit the examination fee.

SEC. 14. Section 44036 of the Health and Safety Code is amended to read:

44036. (a) The consumer protection-oriented quality assurance

portion of the motor vehicle inspection program shall ensure uniform and consistent tests and repairs by all qualified smog check mechanics and licensed smog check stations throughout the district, and shall include a number of referee stations available to consumers. Sufficient referee stations shall be provided to accommodate at least 2 percent of the motor vehicles subject to the requirements of this chapter.

(b) All licensed smog check stations shall utilize equipment which has been certified by the department. The department shall adopt, and may from time to time revise, standards for certification and decertification of the equipment, which may include a device for testing of emissions of oxides of nitrogen. As expeditiously as possible, the department shall adopt equipment standards which shall include a test analyzer system containing all of the following:

(1) A microprocessor to control test sequencing, selection of proper test standards, the automatic pass or fail decision, and the format for the test report and the recorded data file. The microprocessor shall be capable of using a standardized programming language specified by the department

(2) An exhaust gas analysis portion with an analyzer for hydrocarbons, carbon monoxide, and carbon dioxide which is designed to accommodate an optional oxides of nitrogen analyzer.

(3) A device to accept and record motor vehicle identification information, including a device capable of reading bar code information affixed to vehicles pursuant to regulations of the state board.

(4) A device to provide a printed record of the test process and diagnostic information for the motorist.

(5) A device capable of measuring engine speed from all models of vehicles using spark ignition at the time the specification is adopted by the department.

(6) A mass storage device capable of storing not less than the minimum amount of program software and data specified by the department

(7) A device to provide for the periodic modification of all program and data files contained on the mass storage device, using a standardized form of removable media conforming to specifications of the department.

(8) A device which provides for the storage of test records on a standardized form of removable media conforming to specifications of the department.

(9) One or more communications ports conforming to the specifications established by the department.

(10) An interface capable of monitoring equipment used with loaded mode testing.

(11) Any other features that the department determines will increase the effectiveness of the program.

(c) The department shall require all smog check stations to use equipment meeting the requirements of subdivision (b) as soon as

possible after July 1, 1990, but not later than January 1, 1992. However, the department may defer the requirement for any equipment, external to the chassis of the test analyzer system, needed to read bar code information until such time as a substantial portion of the vehicles subject to the requirements of this chapter are equipped with bar code labels. Prior to a requirement for equipment meeting the requirements of subdivision (b), every smog check station shall use equipment meeting the specifications of the department in effect on January 1, 1988. Any equipment required may be supplied by a single supplier in any nonattainment area if it is determined that there would be a demonstrable cost savings as shown through the solicitation and evaluation of competitive bids for each nonattainment area. If it is determined that any equipment required shall be supplied by a single supplier, the supplier shall enter into a master agreement with the department specifying the prices, terms, and conditions under which the supplier will provide equipment in a uniform manner within the nonattainment area. The master agreement shall contain terms consistent with the bid upon which it is based.

(d) The quality assurance portion shall provide for inspections of licensed smog check stations, data collection and forwarding, equipment accuracy checks, operation of referee stations, and other necessary functions. In contracting for services pursuant to subdivision (d) of Section 44014, the department shall prepare detailed specifications and solicit bids from private entities for the implementation of the quality assurance functions.

(e) The department may revise the specifications for equipment annually if the cost thereof is less than 20 percent of the total system cost. A more comprehensive revision to the specifications may be required not more often than every five years.

SEC. 15. Section 44036.5 is added to the Health and Safety Code, to read:

44036.5. (a) The department shall set standards for test analyzer system (TAS) calibration gases and shall establish criteria to certify and decertify gas blenders who blend, fill, or sell TAS calibration gases.

(b) On and after January 1, 1990, no person shall blend, fill, or sell any TAS calibration gases unless certified by the department and no person shall use in a TAS calibration gases which are not certified.

SEC. 16. Section 44060 of the Health and Safety Code is amended to read:

44060. (a) The department shall prescribe the form of the certificate of compliance or noncompliance. The department shall charge a fee to licensed smog check stations for the issuance by the department to the stations of certificate of compliance or noncompliance forms. The fee charged shall be calculated to allow funding of the department and any other state agency directly involved in the implementation of the motor vehicle inspection program, and shall not exceed the amount reasonably necessary to

fund the operation of the program, including all responsibilities, requirements, and obligations imposed upon the department or any of those state agencies by this chapter, which are not otherwise recoverable by license fees pursuant to Section 44034. Except for adjustments to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics, the fee for each certificate of compliance or noncompliance shall not exceed six dollars ($6). It is the intent of the Legislature that a prudent surplus be maintained in the Vehicle Inspection and Repair Fund. If the surplus exceeds reasonable costs of administration of the programs specified in this chapter and in Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business and Professions Code, the department shall, by regulation, prescribe a lower fee for the certificate of compliance or noncompliance.

(b) The sale or transfer of any certificate of compliance or noncompliance by a licensed smog check station to any other licensed smog check station or any other person, and the purchase or acquisition of any certificate of compliance or noncompliance by any person, other than from the department, the department's designee, or pursuant to a vehicle inspection or repair conducted pursuant to this chapter, is prohibited.

(c) The fee charged by licensed stations to consumers for a certificate of compliance or a certificate of noncompliance shall be the same amount charged by the department.

SEC. 17. Section 4000.1 of the Vehicle Code is amended to read:

4000.1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, and upon registration of a motor vehicle previously registered outside this state which is subject to those provisions of the Health and Safety Code, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) 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, the department shall accept a statement completed pursuant to subdivision (b) of Section 24007 in lieu of the certificate of compliance.

(c) For purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code shall control.

(d) Subdivision (a) does not apply to a transfer of ownership and registration under any of the following circumstances:

(1) The transferor is either the parent, grandparent, child,

grandchild, or spouse of the transferee.

(2) A vehicle registered to a sole proprietorship is transferred to the proprietor as owner.

(3) The transfer is between companies whose principal business is leasing vehicles, if there is no change in the lessee or operator of the vehicle or between the lessor and the person who has been, for at least one year, the lessee's operator of the vehicle.

(4) The transfer is between the lessor and lessee of the vehicle, if there is no change in the lessee or operator of the vehicle.

(5) Commencing on January 1, 1993, the vehicle was manufactured prior to the 1966 model-year.

(e) The State Air Resources Board, under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, may exempt designated classifications of motor vehicles from subdivision (a) as it deems necessary, and shall notify the department of that action.

SEC. 18. Section 4000.2 of the Vehicle Code is amended to read:

4000.2. (a) Except as otherwise provided in subdivision (b) of Section 43654 of the Health and Safety Code, and, commencing on January 1, 1993, except for 1965 or earlier model-year motor vehicles, the department shall require upon registration of a motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, previously registered outside this state, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) For the purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code shall control.

SEC. 19. Section 2.5 of this bill incorporates amendments to Section 9889.75 of the Business and Professions Code proposed by both this bill and AB 1104. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 9889.75 of the Business and Professions Code, and (3) this bill is enacted after AB 1104, in which case Section 2 of this bill shall not become operative.

SEC. 20 No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 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.

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

CHAPTER 1155

An act to amend Section 33413 of, and to add Section 33334.15 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 33334.15 is added to the Health and Safety Code, to read:

33334.15. Subsidies provided pursuant to paragraph (8) of subdivision (e) of Section 33334.2 may include payment of a portion of the principal and interest on bonds issued by a public agency to finance housing for persons and families specified in that paragraph if the agency ensures by contract that the benefit of the subsidy will be passed on to those persons and families in the form of lower housing costs.

SEC. 2. 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 which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, 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 which have an equal or greater number of bedrooms as those destroyed or removed 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, for the longest feasible time, as determined by the agency, 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 2.5. 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 which is subject to a written agreement with the agency or where financial assistance has been provided by the agency, 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 within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units.

(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, for the longest feasible time, as determined by the agency, 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.

(g) "Longest feasible time," as used in this section, includes, but is not limited to, unlimited duration

SEC. 3. Section 2.5 of this bill incorporates amendments to

Section 33413 of the Health and Safety Code proposed by both this bill and AB 2080. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 33413 of the Health and Safety Code, and (3) this bill is enacted after AB 2080, in which case Section 2 of this bill shall not become operative.

CHAPTER 1156

An act to amend Section 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 23610.5 of the Revenue and Taxation Code, as amended by Chapter 46 of the Statutes of 1989, is amended to read:

23610.5. (a) (1) For income years beginning before January 1, 1990, there shall be allowed as a credit against the "tax" (as defined by Section 23036) a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, including the amendments contained in the Technical Corrections and Miscellaneous Revenue Act of 1988, except as otherwise provided in this section.

(2) "Taxpayer," for purposes of this section, means the sole owner in the case of a C corporation, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor," for purposes of this section, means the sole owner in the case of a C corporation, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h) (4) (B) of the Internal Revenue Code

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to

Section 42 of the Internal Revenue Code.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section to which the housing sponsor is entitled for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building placed in service by the housing sponsor after 1987 (for new buildings whether or not the building is federally subsidized and for existing buildings), the term "applicable percentage" means either of the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cumulative cash distribution from the operation of the qualified low-income housing project in an amount not to exceed 8 percent per annum on the investment in the project. For purposes of this paragraph, the investment in the project shall be equal to the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note. The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(2) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under

paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four income years" for "10 taxable years."

(2) The special rule for the first taxable year of credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of the 1988 or 1989 income year, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year credit period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), and (7) of Section 42(h) of the Internal Revenue Code shall not be applicable.

(g) (1) Except as provided in paragraph (2), the aggregate housing credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 17058 shall be an amount equal to one dollar and twenty-five cents ($1.25) multiplied by the state population in each year, as established by the Department of Finance.

(2) The portion of the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee which is not allocated for each of the calendar years may be carried over to any subsequent calendar years through 1989.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30-consecutive income years beginning with the first income year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 15 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units

from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the next available units as low-income units subject to the set-aside and rent requirements, up to the original number of low-income units, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

(1) The requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor.

(2) The regulatory agreement shall include, but not be limited to, the following:

(A) A term equal to the compliance period.

(B) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(C) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(D) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto.

(E) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(F) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(G) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(H) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents

which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(I) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief as may be appropriate.

(j) In allocating the housing credit, the Mortgage Bond and Tax Credit Allocation Committee shall give priority to qualified low-income housing projects that satisfy the following criteria, which are weighted according to the numerical order of the paragraphs listed below:

(1) Projects that have received government financing or mortgage assistance and are eligible and likely to convert to market-rate rental units.

(2) (A) Projects that commit to providing low-income units for a significantly longer period than the compliance period under this section.

(B) Projects that commit to providing a greater percentage of low-income units than is required under Section 42(g)(1) of the Internal Revenue Code.

(3) Projects that commit to charging rent for low-income units that is less than the rent requirements under Section 42(g)(2) of the Internal Revenue Code.

(4) (A) Projects for which the rate of return on cash investment is less than the rate allowed under this section

(B) Projects targeted to those groups identified in the California Statewide Housing Plan as having special needs, including projects that ensure that rural areas receive a proportionate share of the housing credits, which share shall in no event be less than 20 percent of the total allocation, including 20 percent of any unallocated credit from prior years as provided in subdivision (m) For the purposes of this paragraph, "rural areas" has the same meaning as defined in Section 50101 of the Health and Safety Code.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the state credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 17058 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 17058 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987 and 1988.

(n) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on or after December 1, 1990, for as long as Section 42 of the Internal Revenue Code, pertaining to low-income housing credits, remains in effect.

SEC. 2. This act shall not become operative unless Senate Bill 726 of the 1989–90 Regular Session is chaptered.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.

CHAPTER 1157

An act to amend Section 655 of the Insurance Code, and to amend Sections 16004, 16034, 16072, 16371, 16374, 16376, 16430, 16431, 16434, 16435, 16436, 16450, 16451, 16452, 16457, 16480, 16482, 16483, 16484, 16500, 16500.5, 16502, and 16503 of, to amend the heading of Chapter 3 (commencing with Section 16430) of Division 7 of, to add Section 95 to, and to repeal Section 16432.5 of, the Vehicle Code, relating to insurance.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 655 of the Insurance Code is amended to read:

655. Every insurer issuing policies of motor vehicle liability insurance within the meaning of Section 16450 of the Vehicle Code,

shall also, as an incident thereto, complete and file the certificate or certificates provided for under Sections 16431 and 16432 of the Vehicle Code. The proof required by this section may be provided by the filing of a single certificate.

SEC. 2. Section 95 is added to the Vehicle Code, to read:

95. "Ability to respond in damages" means financial responsibility.

SEC. 3. Section 16004 of the Vehicle Code is amended to read:

16004. (a) The department shall suspend the driving privilege of any person who fails, refuses, or neglects to make a report of an accident as required in this chapter.

(b) A suspension taken under this section shall remain in effect until terminated by receipt of the report of the accident or upon receipt of evidence that financial responsibility as provided in Section 16022 is in effect.

(c) The driving privilege shall not be suspended under this section, and, if a suspension has been imposed and is in effect under this section, 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 same accident for which the report of the accident is required by this section. The department may suspend or reimpose the suspension of the driving privilege of a person under this section 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 financial responsibility, as provided in Chapter 3 (commencing with Section 16430).

SEC. 4. Section 16034 of the Vehicle Code is amended to read:

16034. (a) Every person convicted of a violation of subdivision (a) of Section 16028 shall, within 60 days of the conviction, file with the department and thereafter maintain for a period of three years, proof of financial responsibility as specified in Chapter 3 (commencing with Section 16430). Every person convicted of a violation of Section 16029 shall, as a condition to (1) return of the person's driver's license following conclusion of the suspension under those provisions or (2) termination of restrictions imposed pursuant to subdivision (b) of Section 16029 one year after imposition thereof, file with the department and thereafter maintain for a period of three years, proof of financial responsibility as specified in Chapter 3 (commencing with Section 16430).

(b) The department shall obtain the record of persons convicted of violations of Section 16029 or subdivision (a) of Section 16028 from the courts as provided in Section 1803.

(c) For purposes of this section, a conviction shall be deemed to have occurred if the criteria of Section 13103, 13105, or 40698 are satisfied.

(d) Except as provided in Section 16035 and subdivision (f) of Section 16028, the department shall immediately suspend the driving

privileges of any person who fails to file or maintain proof of ability to respond in damages as required by this section. The suspension shall remain in effect so long as there is a lack of compliance with the requirements of this section.

(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.

SEC. 5. 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 as provided in Chapter 3 (commencing with Section 16430), 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 as provided in this section 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, so long as proof of financial responsibility is maintained.

(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.

SEC. 6. Section 16371 of the Vehicle Code is amended to read:

16371. The suspension shall remain in effect, and no license shall be issued to the judgment debtor until the judgment debtor gives proof of financial responsibility as provided in Chapter 3

(commencing with Section 16430), and until either the judgment is satisfied in full or to the extent provided in this chapter. subject to the exemption provided in Section 16375.

SEC. 7. Section 16374 of the Vehicle Code is amended to read:

16374. Whenever after a judgment is satisfied and proof of financial responsibility is given, another judgment is rendered against the same person for any accident occurring prior to the date of the giving of the proof and the person fails to satisfy the latter judgment within the amounts specified in this chapter within 15 days after the latter judgment became final, then the department shall again suspend the driver's license of the judgment debtor and shall not issue to him or her any driver's license while the latter judgment remains unsatisfied and subsisting within the amounts specified in this chapter.

SEC. 8. Section 16376 of the Vehicle Code is amended to read:

16376. If the person against whom judgment is rendered is a nonresident and the person fails within the prescribed time to satisfy the judgment in full or to the extent specified in this chapter, all privileges of operating a motor vehicle in this state given to the person under this code shall be suspended while the judgment remains in effect and unsatisfied and until the nonresident gives proof of his or her financial responsibility in the manner and to the extent provided in Chapter 3 (commencing with Section 16430) for accidents occurring after the date of the giving of proof.

The department shall forward a certified copy of the judgment of a court of record or a certified copy of the docket of a court not of record to the appropriate officer in charge of the licensing of drivers in the state of which the person is a resident.

SEC. 8.5. The heading of Chapter 3 (commencing with Section 16430) of Division 7 of the Vehicle Code is amended to read:

CHAPTER 3. PROOF OF FINANCIAL RESPONSIBILITY

SEC. 9. Section 16430 of the Vehicle Code is amended to read:

16430. Proof of financial responsibility when required by this code means proof of financial responsibility resulting from the ownership or operation of a motor vehicle and arising by reason of personal injury to, or death of, any one person, of at least fifteen thousand dollars ($15,000), and, subject to the limit of fifteen thousand dollars ($15,000) for each person injured or killed, of at least thirty thousand dollars ($30,000) for the injury to, or the death of, two or more persons in any one accident, and for damages to property (in excess of five hundred dollars ($500)), of at least five thousand dollars ($5,000) resulting from any one accident. Proof of financial responsibility may be given in any manner authorized in this chapter.

SEC. 10. Section 16431 of the Vehicle Code is amended to read:

16431. Proof of financial responsibility may be given by the written certificate or certificates of any insurance carrier duly

authorized to do business within the state, that it has issued to or for the benefit of the person named therein a motor vehicle liability policy as defined in Section 16450, which, at the date of the certificate or certificates is in full force and effect.

SEC. 11. Section 16432.5 of the Vehicle Code is repealed.

SEC. 12. Section 16434 of the Vehicle Code is amended to read:

16434. Proof of financial responsibility may be given by a bond. The bond shall be conditioned for the payment of the amount specified in Section 16430, and shall provide for the entry of judgment on motion of the state in favor of any holder of any final judgment on account of damages to property over five hundred dollars ($500) in amount, or injury to any person caused by the operation of the person's motor vehicle.

SEC. 13. Section 16435 of the Vehicle Code is amended to read:

16435. Proof of financial responsibility may be given by the deposit of thirty-five thousand dollars ($35,000), as provided in Section 16054.2. The department shall not accept a deposit where any judgment theretofore obtained against that person as a result of damages arising from the operation of any motor vehicle shall not have been paid in full.

SEC. 14. Section 16436 of the Vehicle Code is amended to read:

16436. Proof of financial responsibility may be given by the written certificate of a self-insurer holding a certificate of self-insurance for bodily injury and property damage issued by the department.

The certification shall name the employee in whose behalf it is filed and shall bind the self-insurer in a like manner and to the same amounts as provided for in Section 16430 for damages arising from the operation of a motor vehicle by the employee within the scope of his or her employment by the self-insurer. In that case, the department shall restrict any driver's license issued to the employee to the operation of motor vehicles owned by the self-insurer within the scope of his or her employment by the self-insurer.

The certificate shall be canceled upon 10 days' prior written notice to the department by the self-insurer.

SEC. 15. Section 16450 of the Vehicle Code is amended to read:

16450. A "motor vehicle liability policy," as used in Chapters 1 (commencing with Section 16000), 2 (commencing with Section 16250), and 4 (commencing with Section 16500), and this chapter, means an owner's policy or an operator's policy, or both, of liability insurance, certified as provided in Section 16431 as proof of financial responsibility, issued by an insurance carrier authorized to transact that business in this state to or for the benefit of the person named therein as assured. Any requirements set forth in Chapters 1 (commencing with Section 16000), 2 (commencing with Section 16250), and 4 (commencing with Section 16500), and this chapter relating to a motor vehicle liability policy shall apply only to those policies which have been certified as proof of financial responsibility as provided in Section 16431.

SEC. 16. Section 16451 of the Vehicle Code is amended to read:

16451. An owner's policy of motor vehicle liability insurance shall insure the named insured and any other person using any motor vehicle registered to the named insured with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of ownership, maintenance, or use of the motor vehicle within the continental limits of the United States to the extent and aggregate amount, exclusive of interest and costs, with respect to each motor vehicle, of fifteen thousand dollars ($15,000) for bodily injury to or death of each person as a result of any one accident and, subject to the limit as to one person, the amount of thirty thousand dollars ($30,000) for bodily injury to or death of all persons as a result of any one accident and the amount of five thousand dollars ($5,000) for damage to property of others as a result of any one accident.

SEC. 17. Section 16452 of the Vehicle Code is amended to read:

16452. An operator's policy of motor vehicle liability insurance shall insure the person named as insured therein against loss from the liability imposed on that person by law for damages arising out of use by that person of any motor vehicle not owned by that person, and for any subsequently acquired motor vehicle for a period not to exceed 10 days from date of purchase, within the same territorial limits and subject to the same limits of liability as are provided for in an owner's policy of liability insurance.

SEC. 18. Section 16457 of the Vehicle Code is amended to read:

16457. Whenever proof of financial responsibility is required, no person of whom that proof is required shall drive any motor vehicle not covered by the certificate of proof of financial responsibility filed by him or her with the department, nor shall any applicant for that proof knowingly fail to disclose ownership of a motor vehicle in the application for proof of financial responsibility or to disclose any subsequently acquired motor vehicle.

SEC. 19. Section 16480 of the Vehicle Code is amended to read:

16480. (a) The department shall upon request, or may at its own discretion, cancel any bond or any certificate of insurance, or the department shall direct the return to the person entitled thereto of any money or securities deposited pursuant to this code as proof of financial responsibility, or the department shall waive the requirement of filing proof of financial responsibility in any of the following events:

(1) When the person is no longer required to maintain the proof under the provisions of this code.

(2) At any time after three years from the date the proof was required.

(3) Upon the death of the person on whose behalf the proof was filed.

(4) The permanent incapacity of the person to operate a motor vehicle if the person surrenders for cancellation his or her driver's license to the department.

(b) The department shall not release proof filed by the bond of individual sureties as set forth in Section 16434, or if given in the manner prescribed by Section 16435, if any action for damages upon a liability referred to in this code is then pending or if any judgment upon any the liability is outstanding and unsatisfied. An affidavit of the applicant of the nonexistence of those facts shall be prima facie evidence thereof.

SEC. 20. Section 16482 of the Vehicle Code is amended to read:

16482. (a) Any person whose privilege to operate a motor vehicle has been suspended because of failure to satisfy a judgment and the judgment has been outstanding for a period of three years or more, may be relieved of the penalties therein provided and the privilege of the person to operate a motor vehicle may be restored in the event the person files with the department and thereafter maintains proof of financial responsibility notwithstanding that the judgment which gave rise to the order of suspension has not been paid or fully satisfied.

(b) Any person who has filed proof of financial responsibility as required for three years, or who has been eligible to file that proof for three years, may be relieved of the requirement of filing proof as provided in paragraph (2) of subdivision (a) of Section 16480.

SEC. 21. Section 16483 of the Vehicle Code is amended to read:

16483. The department shall cancel any bond or any certificate of insurance or direct the return of any money or securities to the person entitled thereto, upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this code.

SEC. 22. Section 16484 of the Vehicle Code is amended to read:

16484. Except when a nonresident minor's certificate or minor's license is canceled as required by Sections 12504 and 17704, respectively, whenever any evidence of proof of financial responsibility filed by any person under the provisions of this code no longer fulfills the purpose for which required, the department shall require other evidence of financial responsibility as required by Article 1 (commencing with Section 16430) and shall suspend the privilege of the person to operate a motor vehicle upon a highway. The suspension shall remain in effect until adequate proof of financial responsibility is filed with the department by the person.

SEC. 23. Section 16500 of the Vehicle Code is amended to read:

16500. Every owner of a vehicle used in the transportation of passengers for hire, including taxicabs, when the operation of the vehicle is not subject to regulation by the Public Utilities Commission, shall maintain, whenever he or she may be engaged in conducting those operations, proof of financial responsibility resulting from the ownership or operation of the vehicle and arising by reason of personal injury to, or death of, any one person, of at least fifteen thousand dollars ($15,000), and, subject to the limit of fifteen thousand dollars ($15,000) for each person injured or killed, of at least thirty thousand dollars ($30,000) for the injury to, or the death of, two or more persons in any one accident, and for damages to property

of at least five thousand dollars ($5,000) resulting from any one accident. Proof of financial responsibility may be maintained by either:

(a) Being insured under a motor vehicle liability policy against that liability.

(b) Obtaining a bond of the same kind, and containing the same provisions, as those bonds specified in Section 16434.

(c) By depositing with the department thirty-five thousand dollars ($35,000), which amount shall be deposited in a special deposit account with the Controller for the purpose of this section.

(d) Qualifying as a self-insurer under Section 16053.

The department shall return the deposit to the person entitled thereto when he or she is no longer required to maintain proof of financial responsibility as required by this section or upon his or her death.

SEC. 24. Section 16500.5 of the Vehicle Code is amended to read:

16500.5. (a) Except as specified in subdivision (b), the owner of the following commercial vehicles shall maintain proof of financial responsibility in the amount required by the director:

(1) A vehicle used to carry passengers for hire, except taxicabs as defined in subdivision (c) of Section 27908.

(2) A vehicle having an unladen weight of over 7,000 pounds which is used in the transportation of property in the conduct of a business.

(b) Subdivision (a) does not apply to the following vehicles:

(1) A schoolbus.

(2) A motor vehicle used by a farmer exclusively in the transportation of his or her livestock, implements of husbandry, and agricultural commodities or in the transportation of supplies to his or her farm.

(3) A motor vehicle used by a resident farmer of this state to occasionally transport from the place of production to a warehouse, regular market, place of storage, or place of shipment the farm products of neighboring farmers in exchange for like services, farm products, or other compensation.

(4) A vehicle used in for-hire transportation which is subject to regulation by the Public Utilities Commission.

(5) A rented vehicle used for noncommercial transportation of property.

(c) The director shall establish the amounts which are determined adequate to cover damages resulting from the ownership or operation of a commercial vehicle or vehicles subject to this section arising by reason of personal injury to, or death of, any person or damage to property, or both. The director shall establish the amounts at levels equal to those prescribed by the Public Utilities Commission for owners and operators of for-hire vehicles subject to its jurisdiction and control.

(d) Proof of financial responsibility may be maintained by any of the following:

(1) Being insured under one or more motor vehicle liability policies against that liability.

(2) Obtaining a bond of the same kind, and containing the same provisions, as those bonds specified in Section 16434.

(3) By depositing with the department five hundred thousand dollars ($500,000), which amount shall be deposited in a special deposit account with the Controller for the purpose of this section.

(4) Qualifying as a self-insurer under Section 16053.

(e) The department shall return the deposit made pursuant to paragraph (3) of subdivision (d) to the person entitled thereto when the owner is no longer required to maintain proof of financial responsibility as required by this section or upon the owner's death.

(f) An insurer, agent, or broker who has been incorrectly informed by an owner of a vehicle or his or her representative that the vehicle is 7,000 pounds or less unladen weight, or is incorrectly informed by the owner or his or her representative that the vehicle is exempt from the requirements of subdivisions (a) and (c) pursuant to the exemptions set forth in subdivision (b), may issue a policy of motor vehicle liability insurance in any amount less than that required by the director but not less than the amounts required under Section 16451. The policy of motor vehicle liability insurance when issued shall not be deemed to provide liability coverage amounts greater than that specifically set forth in the policy notwithstanding that the vehicle weighs in excess of 7,000 pounds unladen weight or is subsequently used in a manner which would have required the vehicle to be insured in the amounts established by the director pursuant to subdivision (c).

SEC. 25. Section 16502 of the Vehicle Code is amended to read:

16502. No owner shall use, or with his or her consent permit the use of, any vehicle used in the transportation of persons or property in the conduct of a business, without maintaining proof of financial responsibility as required by this chapter.

SEC. 26. Section 16503 of the Vehicle Code is amended to read:

16503. The department shall suspend the registration of all vehicles used in the transportation of persons or property in the conduct of a business, except vehicles subject to regulation by the Public Utilities Commission, which are registered in the name of any person convicted of violating Section 16502 immediately upon receipt of a duly certified abstract of the record of the court in which the person was convicted.

The suspension shall remain in effect and no such vehicle shall be registered in the name of the person until he or she gives the department proof of his or her financial responsibility as required by Section 16500.

CHAPTER 1158

An act to amend Sections 73682, 73683, 73684, 73686, 73687, 73691, 73692, 73697, 74602, 74604, 74606, 74607, 74610, 74921.6, 74922, 74922.5, 74923, and 74924 of, and to add Section 71181.1 to, the Government Code, relating to courts.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 71181.1 is added to the Government Code, to read:

71181.1. Notwithstanding Section 71181, in Tulare County the ordinances and resolutions of the board of supervisors shall govern the filling of a vacancy in the office of clerk of a justice court and all vacancies in the clerk's office.

SEC. 1.5. Section 73682 of the Government Code is amended to read:

73682. There shall be one municipal court administrator to be appointed by the judges of the court who shall be the clerk, administrator, and secretary of the court, and the provisions of Section 71183 shall not apply. He or she shall hold office at the pleasure of the judges and shall receive a salary within Band "D" of the Fresno County Salary Resolution, effective December 26, 1988.

SEC. 2. Section 73683 of the Government Code is amended to read:

73683. (a) The clerk may appoint the following court personnel who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Administrative Services Assistant at salary within Band "H."

(2) One Administrative Secretary-Conf. at salary range 828.

(3) One Supervising Court Clerk at salary range 939.

(4) Two Senior Court Clerks at salary range 869.

(5) Eighteen Court Clerks II at salary range 805.

(6) Eighteen Court Clerks I at salary range 732.

(7) Five Supervising Legal Process Clerks at salary range 939.

(8) Six Senior Legal Process Clerks at salary range 869.

(9) Ten Legal Process Clerks II at salary range 805.

(10) Ten Legal Process Clerks I at salary range 732.

(11) Thirty-eight Office Assistants III at salary range 557.

(12) Thirty-eight Office Assistants II at salary range 502.

(13) Thirty-eight Office Assistants I at salary range 420.

(14) One Municipal Court Interpreting Services Coordinator at salary range 805.

(15) One Municipal Court Interpreter at salary range 732.

(16) One Secretary to the Municipal Courts III at salary range 717.

(17) One Secretary to the Municipal Court II at salary range 617.

(18) One Secretary to the Municipal Courts I at salary range 560.

(19) One Assistant Municipal Court Administrator at salary within Band "F."

(20) Three Municipal Court Division Managers within salary Band "G."

(21) One Research Attorney III at salary range 1423.

(22) One Research Attorney II at salary range 1318.

(23) One Research Attorney I at salary range 1031.

(b) Salary ranges indicated in paragraphs (1) and (15) through (23) of subdivision (a) are effective December 26, 1988. Salary ranges indicated in paragraphs (2) and (11) through (13) of subdivision (a) are effective December 12, 1988. Salary ranges indicated in paragraphs (3) through (10) and paragraph (14) of subdivision (a) are effective January 9, 1989.

(c) The clerk may appoint any combination of court clerks, legal process clerks, and office assistants described in paragraphs (3) through (13) of subdivision (a) not to exceed a total of 75; may appoint any combination of secretaries described in paragraphs (16) through (18) of subdivision (a) not to exceed a total of one and may appoint any combination of research attorneys described in paragraphs (21) through (23) of subdivision (a) not to exceed a total of one

(d) The clerk may appoint the following court personnel in the Clovis Branch who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Court Clerk II at salary range 805.

(2) One Court Clerk I at salary range 732.

(3) One Supervising Legal Process Clerk at salary range 939.

(4) Eight Legal Process Clerks II at salary range 805.

(5) Eight Legal Process Clerks I at salary range 732.

(6) Eight Office Assistants III at salary range 557.

(7) Eight Office Assistants II at salary range 502.

(8) Eight Office Assistants I at salary range 420.

(e) Salary ranges indicated in paragraphs (1) through (4) of subdivision (d) are effective January 9, 1989. Salary ranges indicated in paragraphs (6) through (8) of subdivision (d) are effective December 12, 1988.

The clerk may appoint any combination of Court Clerks described in paragraphs (1) and (2) of subdivision (d) not to exceed a total of one, and may appoint any combination of the specified number of personnel in each of paragraphs (4) through (8) of subdivision (d) not to exceed a total of eight.

SEC. 3. Section 73684 of the Government Code is amended to read:

73684. The biweekly salaries of the following classes of positions shall be in accordance with the following schedule:

Position	Range	1	2	3	4	5
Municipal Court Administrator	Band D	1707	–	–	–	2390
Assistant Municipal Court Administrator	Band F	1189	–	–	–	1722
Municipal Court Division Manager	Band G	989	–	–	–	1437
Administrative Services Assistant	Band H	733	–	–	–	1177
Administrative Secretary-Conference		828	828	869	912	958	1006
Research Attorney III		1423	1423	1494	1569	1647	1729
Research Attorney II		1318	1318	1384	1453	1526	1602
Research Attorney I		1031	1031	1083	1137	1194	1254
Municipal Court Interpreting Services Coordinator		805	805	845	877	931	978
Municipal Court Interpreter		732	732	769	807	847	889
Secretary to the Municipal Courts III		717	717	753	791	831	873
Secretary to the Municipal Courts II		617	617	648	680	714	750
Secretary to the Municipal Courts I		560	560	588	617	648	680
Supervising Court Clerk		939	939	986	1035	1087	1141
Senior Court Clerk		869	869	912	958	1006	1056
Court Clerk II		805	805	845	887	931	978
Court Clerk I		732	732	769	807	847	889
Supervising Legal Process Clerk		939	939	986	1035	1087	1141
Senior Legal Process Clerk		869	869	912	958	1006	1056
Legal Process Clerk II		805	805	845	887	931	978
Legal Process Clerk I		732	732	769	807	847	889
Office Assistant III		557	557	585	614	645	677
Office Assistant II		502	502	527	553	581	610
Office Assistant I		420	420	441	463	486	510

Except as specifically provided in this article to the contrary, all benefits, privileges and other provisions affecting the employment of county employees shall apply to all officers and attachés of the municipal court.

SEC. 4. Section 73686 of the Government Code is amended to read:

73686. Any officer or attaché to the court who receives a promotion to a position having an overlapping salary range shall be

placed upon the step of the new salary range consistent with the Fresno County Salary Resolution Ordinance 89-002 in effect on January 24, 1989.

SEC. 5. Section 73687 of the Government Code is amended to read:

73687. The minimum salary for each position shall normally be the initial hiring rate for the position. If it is difficult to secure qualified personnel at that rate or if a person of unusual qualifications is engaged, the court or the clerk, as the case may be, may request to hire at a higher step consistent with the Fresno County Salary Resolution Ordinance 89-002 in effect on January 24, 1989.

SEC. 6. Section 73691 of the Government Code is amended to read:

73691. A majority of the judges may appoint 11 full-time court reporters to serve at the pleasure of the judges and to be paid an annual salary established according to the following salary schedule:

Step 1. $31,212
Step 2. $32,774
Step 3. $34,397
Step 4. $36,117

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall be advanced one step annually upon the anniversary date of such employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court Each such reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to an accumulative total of 156 working days. Each such reporter shall accrue and receive vacation at the same rate as judges of such court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken at such time as the judge to which he or she has been assigned consents.

SEC. 7. Section 73692 of the Government Code is amended to read:

73692. Pursuant to Section 72194, the judges of the court may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro tempore. They shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in the section for reporting testimony and proceedings the official reporters pro tempore shall be paid in accord with the following:

Each pro tempore reporter shall be paid one hundred twenty dollars and four cents ($120.04) for a full day on duty under order of the court. For purposes of receiving the above compensation, one or

more of the following shall apply:

(1) The court has indicated in advance that the pro tempore assignment is for a full day.

(2) The pro tempore reporter was on duty for more than four hours.

Each pro tempore reporter shall be paid seventy-two dollars and two cents ($72.02) for one half day of duty under order of the court when (a) the court has indicated in advance that the pro tempore assignment is for a half day and the pro tempore reporter is on duty for four hours or less, generally exclusive of the noon recess; or (b) the court has indicated in advance that the pro tempore assignment is for a full day but the pro tempore reporter is on duty for four hours or less and consents to being released for the balance of the day.

Where a pro tempore reporter has agreed to a one-half day assignment, the courts shall make every practicable effort to assure that the pro tempore reporter shall not be on duty for longer than four hours, unless the pro tempore reporter agrees with the court to work beyond four hours. In the latter case, the full-day pro tempore rate of one hundred twenty dollars and four cents ($120.04) shall apply.

Nothing herein shall be construed to limit the court's authority to in all instances pay a pro tempore reporter at the rate of one hundred twenty dollars and four cents ($120.04) when, in the court's judgment, said rate is necessary to obtain pro tempore reporter services for the court.

The above payments shall upon order of the court be a charge against the general fund of the county.

SEC. 8. Section 73697 of the Government Code is amended to read:

73697. Notwithstanding the provisions of Article 4 (commencing with Section 72150) and the provisions of this article, whenever the business of the court or other emergency requires a greater number of employees or a reclassification of employees in order to effectively carry out the duties and functions of the court, the clerk may, with the approval of the board of supervisors, establish new positions or reclassify existing positions for officers, attachés, and employees in addition to those provided by this article. The order and approval establishing such position shall designate the position title and salary range.

SEC. 9. Section 74602 of the Government Code is amended to read:

74602. (a) Facilities for the court shall be maintained in the City of San Luis Obispo, and may be maintained at any other location within the county. The court may hold sessions at each facility, as business requires. At the direction of the presiding judge, any traffic referee or juvenile court hearing officer appointed pursuant to Section 74605 may perform his or her duties at any court location. At the direction of the court, arraignment of criminal defendants who are in custody at the San Luis Obispo County Jail facility shall be held

at that facility

(b) The judges of the court shall be reimbursed for traveling expenses at the rate provided for employees of the county in accordance with the county travel policy.

SEC. 10. Section 74604 of the Government Code is amended to read:

74604. There shall be one clerk of the court known as the court executive officer, who shall be appointed by the presiding judge with the concurrence of a majority of the judges of the court, and shall hold office at the pleasure of the majority of the judges. The monthly compensation to be paid to the court executive officer shall be Range 2344, Step 5, of the San Luis Obispo County Salary Table. In addition to any other duties imposed on such officer by law, the court executive officer shall have the following duties:

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

(b) To coordinate the personnel practices in compliance with rules of the court.

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

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

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

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

(g) To serve as liaison for the court with other persons, committees, boards, groups, and associations as directed by the presiding judge.

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

SEC. 11. Section 74606 of the Government Code is amended to read:

74606. The county sheriff shall be ex officio marshal of the court and shall act as such without additional compensation. The sheriff may appoint up to six deputies, or more if the business of the court requires, to be ex officio deputy marshals.

SEC. 12. Section 74607 of the Government Code is amended to read:

74607. (a) The presiding judge may make appointments to the following authorized positions:

Number	Classification	Salary Range
1	Assistant Clerk Administrator	1467
2	Calendar Coordinator—1/2 time	1039
10	Municipal Court Clerk Trainee, or	0808
	Municipal Court Clerk I, or	0885
	Municipal Court Clerk II	0949
1	Municipal Court Accounting Technician	0920
2	Municipal Court Account Clerk	0720
1	Accountant I, or	1120
	Accountant II	1280
29	Municipal Court Legal Process Clerk Trainee, or	0674
	Municipal Court Legal Process Clerk I, or	0808
	Municipal Court Legal Process Clerk II, or	0885
	Municipal Court Legal Process Clerk III	0937
2	Municipal Court Legal Process Clerk III—1/2 time	0937
4	Supervising Municipal Court Clerk	1039
1	Administrative Services Officer I	1120
1	Court Data Manager	1863

(b) At no time shall the number of Municipal Court Clerk II positions set forth in subdivision (a) exceed four.

(c) At no time shall the number of Municipal Court Legal Process Clerk II positions set forth in subdivision (a) exceed nine. At no time shall the number of Municipal Court Legal Process Clerks I and II positions set forth in subdivision (a) exceed 13.

SEC. 13. Section 74610 of the Government Code is amended to read:

74610. (a) The positions enumerated in Sections 74604, 74607, and 74608 are deemed to be comparable in job and salary level to certain positions in the service of San Luis Obispo County. The following table sets forth the court classifications with the comparable county classifications shown opposite thereto:

Court Classification	County Classification
Court Executive Officer	Deputy County Counsel IV (Confidential)
Assistant Clerk Administrator	Deputy County Clerk Recorder
Calendar Coordinator—1/2 time	Supervising Superior Court Clerk
Municipal Court Clerks I, II	Superior Court Clerks I, II
Municipal Court Clerk Trainee	Legal Process Clerk I

Municipal Court Accounting Technician	Accounting Technician
Municipal Court Account Clerk	Account Clerk
Accountant I, II	Accountant I, II
Municipal Court Legal Process Clerk Trainee	Legal Process Clerk Trainee
Municipal Court Legal Process Clerks I, II, III	Legal Process Clerks I, II, III
Municipal Court Legal Process Clerk III—1/2 time	Legal Process Clerk III
Supervising Municipal Court Clerk	Supervising Superior Court Clerk
Administrative Services Officer I	Administrative Services Officer I
Court Data Manager	Senior Programmer Analyst

In the event that the salary for any classification which is shown above is increased by the board of supervisors, a commensurate increase shall be made in the salary for the comparable court classification. Salary adjustments made pursuant to this section shall be effective the same date as the effective date of action of the board of supervisors applicable to the respective and comparable county classifications, but shall remain effective only until January 1 of the second year following the year in which such an adjustment in salary is made.

(b) Upon recommendation of the judges of the court, and with the approval of the board of supervisors, the court may appoint additional employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Any appointment made pursuant to this section shall be on an interim basis and shall expire January 1st of the second calendar year following the year in which the appointment is made unless ratified by the Legislature. This section shall not affect the application of Section 72150.

SEC. 14. Section 74921.6 of the Government Code is amended to read:

74921.6. In the Tulare-Pixley Judicial District there shall be one clerk of the municipal court who shall also act as administrator and secretary of the court. The clerk may appoint one assistant clerk for the municipal court, two court clerks III, three court clerks II, three court clerks I, and four office assistants II.

SEC. 15. Section 74922 of the Government Code is amended to read:

74922. In the Visalia Judicial District there shall be one clerk of the municipal court who shall also act as administrator and secretary of the court. The clerk may appoint one assistant clerk of the municipal court, three court clerks III, one collection worker II, five court clerks II, two court clerks I, one account clerk, and nine office

assistants II, each of whom shall receive a salary in accordance with Sections 74923 and 74924.

SEC. 16. Section 74922.5 of the Government Code is amended to read:

74922.5. There shall be one marshal for each municipal court who shall receive a biweekly salary of one thousand three hundred eighty-four dollars and eight cents ($1,384.08). The marshal of the Visalia Judicial District may appoint five deputy marshals, one legal office assistant II, and one office assistant II. The marshals of the Porterville and Tulare-Pixley Judicial Districts may each appoint three deputy marshals, and one legal office assistant II, each of whom shall receive a salary in accordance with Sections 74923 and 74924. In the Tulare-Pixley and Porterville Judicial Districts, one deputy marshal in each district shall serve on a half-time basis.

SEC. 17. Section 74923 of the Government Code is amended to read:

74923. The biweekly salaries for the following classes of positions shall be 80 times the hourly rate set forth in the following schedule:

TITLE	RANGE	A	B	C	D	E
Clerk Municipal Court	182	11 986	12 595	13 236	13 908	14 615
Assistant Clerk Municipal Court	165	10 128	10 643	11 183	11 751	12 348
Court Clerk III . .	148	8 559	8 994	9 449	9 929	10 434
Collections Worker II	136	7 601	7 987	8 392	8 817	9 264
Court Clerk II	133	7 379	7 753	8 146	8.559	8 994
Court Clerk I	118	6 363	6 685	7 023	7 379	7 753
Legal Office Assistant II	124	6 751	7 093	7 452	7 830	8 227
Office Assistant II	114	6 116	6 426	6 751	7 093	7.452
Deputy Marshal	166	10 229	10 749	11 294	11 868	12 471

SEC. 18. Section 74924 of the Government Code is amended to read:

74924. Subject to the provisions of Section 72001, the compensation of officers and attachés shall be governed as follows:

(a) The initial hiring rate for each position shall be at Step A. If it is difficult to secure qualified personnel at such a rate, or if a person of unusual qualifications is hired, the appointing authority, with the approval of the board of supervisors, may employ such a person at one of the higher salary steps provided for the position.

(b) All step increases shall not be given as a matter of right but only when the presiding judge of the court determines that an officer or employee employed in the office of the clerk, or the marshal determines that an officer or employee employed in the office of the marshal, is properly entitled to receive it. Each person employed in the office of the clerk or marshal, including the clerk, may be advanced from Step A to Step B of a position after the completion of 13 full pay periods of service in the position. A person may be advanced to Steps C, D and E upon completion of 26 full pay periods of service in the same position.

(c) Certain classes of positions in the municipal courts in Tulare County are deemed to be comparable in job and salary level to certain positions in the service of the County of Tulare, or in some instances to such positions with a range adjustment on the salary schedule of the County of Tulare. Whenever the salary of a classification in the service of Tulare County is adjusted by the board of supervisors the salary of the comparable classification in the municipal courts shall be adjusted an equal number of ranges on the currently effective salary schedule established by the board of supervisors. Such adjustments shall be effective on the same date as the effective date of the action by the board of supervisors as it applies to classifications in the county service, but such adjustments shall be effective only until January 1 of the second year following the year in which such adjustments are made, unless ratified by the Legislature. The following table sets forth the municipal court classification with the comparable county classification with appropriate range adjustment, if any, shown opposite thereto:

Municipal Court Classification	County Classification
Clerk of the Municipal Court	Chief Deputy Court Clerk plus 7 ranges
Assistant Clerk, Municipal Court	Chief Deputy Court Clerk minus 10 ranges
Court Clerk III	Courtroom Clerk
Collection Worker II	Collection Worker II
Court Clerk II	Courtroom Clerk minus 15 ranges
Court Clerk I	Courtroom Clerk minus 30 ranges
Legal Office Assistant II	Legal Office Assistant II
Office Assistant II	Office Assistant II
Marshal	Sheriff's Sergeant
Deputy Marshal	Bailiff plus 2 ranges

SEC. 19. 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1159

An act to amend Section 14585 of the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 14585 of the Public Resources Code is amended to read:

14585. (a) The department shall develop guidelines and criteria for issuing convenience incentive payments solely to assist in establishing recycling locations in convenience zones without sufficient recycling locations pursuant to Chapter 6 (commencing with Section 14570). The department may establish a convenience incentive payment if the payment meets all of the following:

(1) The payment shall be set by the department at the minimum level determined by the department to be sufficient to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(2) The department may revise the payment upon finding that the previous payment is inadequate, and shall revise the payment upon finding that the previous payment is excessive, to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(3) The department may require the operators of the recycling locations to maintain daily records of redemptions at the locations, and may require the locations to take any other steps necessary for the department to ensure that the operators do not receive an excessive convenience incentive payment.

(4) The department may make convenience incentive payments to the operators of recycling locations through processors or directly, at the department's discretion, in the same manner as the department pays redemption values, redemption bonuses, and processing fees to recycling locations.

(5) On and after January 1, 1989, the department shall not make convenience incentive payments to more than one certified recycling center in a convenience zone. When two or more convenience zones overlap by more than one-half mile, the department shall offer a single convenience incentive payment to cover the affected convenience zones. This convenience incentive payment shall not be split between the affected zones. The department shall stop making convenience incentive payments if another recycling center is willing to certify operation within the convenience zone without receiving payments pursuant to this section and operates in compliance with this division for 60 days. If

the department stops making convenience incentive payments, the department shall pay to the recycling center all amounts which were to be paid to the recycling center prior to the termination of these payments.

(6) If a convenience incentive payment to a certified recycling center located in a convenience zone exceeds eight hundred dollars ($800) per month, the department shall review the convenience zone to determine if the convenience zone should be exempted pursuant to Section 14571.8.

(b) The department shall conduct a study on use of each of the payment mechanisms authorized by subdivision (b) and on use of bonds, grants, and loans authorized by Section 14584 and report to the Legislature on or before January 1, 1989, on the effectiveness of each of these mechanisms.

(c) The department may authorize prepayment of convenience incentive payments to recycling centers pursuant to subdivision (a) for periods of up to one year at a time.

CHAPTER 1160

An act relating to transportation.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Department of Transportation shall cooperate with and assist agencies in the Los Angeles area, including the City of Los Angeles, in developing truck traffic management strategies. The department's assistance may include examination of the impact and feasibility of designating specified north-south and east-west freeway routes for truck traffic during peak traffic periods, as well as the use of lane restrictions, during peak traffic periods.

CHAPTER 1161

An act to amend Sections 4513, 4584, 4622, and 4789.2 of the Public Resources Code, relating to forestry.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 4513 of the Public Resources Code is amended to read:

4513. It is the intent of the Legislature to create and maintain an effective and comprehensive system of regulation and use of all timberlands so as to assure that:

(a) Where feasible, the productivity of timberlands is restored, enhanced, and maintained.

(b) The goal of maximum sustained production of high-quality timber products is achieved while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment, and aesthetic enjoyment.

SEC. 2. 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 this chapter or portions thereof, any person engaged in forest management whose activities are limited to any of the following:

(a) The cutting or removal of trees for the purpose of constructing or maintaining a right-of-way for utility lines.

(b) 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.

(c) The cutting or removal of dead, dying, or diseased trees of any size.

(d) Site preparation.

(e) Maintenance of drainage facilities and soil stabilization treatments.

(f) Timber operations on land managed by the Department of Parks and Recreation.

(g) The one-time conversion of less than three acres to a nontimber use.

(h) Easements granted by a right-of-way construction agreement administered by the federal government if any timber sales and operations within or affecting these areas are reviewed and conducted pursuant to the National Environmental Policy Act of 1969 (42 U.S.C Sec 4321 et seq.).

SEC. 3 Section 4622 of the Public Resources Code is amended to read:

4622 Approval of an application for conversion shall be conditioned upon the granting of the necessary rezoning or use permit if rezoning or a use permit is required. Except as provided in Section 4584, all timber shall be cut pursuant to an approved conversion pursuant to Section 4581, excluding requirements for stocking and methods of silviculture, except that the timber harvesting plan required by that section need not be prepared by a registered professional forester, and no timber operations shall commence until the granting of such rezoning or use permit as may be required and until the timberland conversion permit is recorded in the county recorder's office in each county wherein the timberland to be converted is located.

SEC. 4. Section 4789.2 of the Public Resources Code is amended to read:

4789.2. As used in this chapter:

(a) "Board" means the State Board of Forestry.

(b) "Resources Planning Act" means the Forest and Rangelands Renewable Resources Planning Act of 1974 (16 U.S.C. 1601-1610).

(c) "Assessment" means the forest resource assessment and analysis developed pursuant to Section 4789.3.

(d) "Director" means the Director of Forestry and Fire Protection.

(e) "Forest and rangeland resources" means those uses and values associated with, attainable from, or closely tied to, forest and rangelands, including fish, range, recreation, timber, watershed, wilderness, and wildlife.

(f) "Forest land" means timberland defined pursuant to subdivision (h), and other lands which have been withdrawn from timber production, such as state parks, national parks, and wilderness areas.

(g) "Timberland" means land on which is growing a significant stand of trees of commercial species, or potential commercial species, either in public or private ownership or which is generally capable of maintaining a stand of trees in perpetuity and not withdrawn or otherwise devoted to uses other than timber production.

(h) "Timber" means wood fiber of commercial or potential commercial species growing on timberland as defined in subdivision (g).

(i) "Rangeland" means land on which the existing vegetation, whether growing naturally or through management, is suitable for grazing or browsing of domestic livestock for at least a portion of the year. Rangeland includes any natural grasslands, savannas, shrublands (including chaparral), deserts, wetlands, and woodlands (including Eastside ponderosa pine, pinyon, juniper, and oak) which support a vegetative cover of native grasses, grasslike plants, forbs, shrubs, or naturalized species.

CHAPTER 1162

An act to amend Sections 1547 and 11413 of the Penal Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 1547 of the Penal Code is amended to read:

1547. (a) The Governor may offer a reward of not more than

fifty thousand dollars ($50,000), payable out of the General Fund, for information leading to the arrest and conviction of any of the following:

(1) Any convict who has escaped from a state prison, prison camp, prison farm, or the custody of any prison officer or employee or as provided in Section 3059 or 4530.

(2) Any person who has committed, or is charged with the commission of, an offense punishable by death.

(3) 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 fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a private hospital, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(7) Any person who commits a violation of Section 11413.

(8) Any person who commits a violation of Section 207.

(9) Any person who has committed a crime involving the burning or bombing of any bookstore or public or private library not subject to Section 11413. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the bookstore or library, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a bookstore or public or private library, or any public or private donor on its behalf from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(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. 2. Section 11413 of the Penal Code is amended to read:

11413. (a) Any person who explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson, in or about any of the places listed in subdivision (b), for the purpose of terrorizing another or in reckless disregard of terrorizing another is guilty of a felony, and shall be punished by imprisonment in the state prison for three, five, or seven years and a fine not exceeding ten thousand dollars ($10,000).

(b) Subdivision (a) applies to the following places:

(1) Any health facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or any place where medical care is provided by a licensed health care professional.

(2) Any church, temple, synagogue, or other place of worship.

(3) The buildings, offices, and meeting sites of organizations that counsel for or against abortion or among whose major activities are lobbying, publicizing, or organizing with respect to public or private issues relating to abortion.

(4) Any place at which a lecture, film-showing, or other private meeting or presentation that educates or propagates with respect to abortion practices or policies, whether on private property or at a meeting site authorized for specific use by a private group on public property, is taking place

(5) Any bookstore or public or private library.

(c) As used in this section, "terrorizing" means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

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

CHAPTER 1163

An act to amend Sections 20111, 20129, 20192, and 20405 of, to add Sections 20107, 20189, 20201.5, 20204.3, 20214, 20224.5, 20234, 20242, 20251.5, 20262, 20274, 20284, 20294, 20302, 20314, 20322, 20332, 20342, 20352, 20374, 20392.5, 20471.5, 20522, 20551.5, 20564.5, 20584.5, 20602.5, 20624, 20633.5, 20642.5, 20651.5, 20685.5, 20688.25, 20694.5, 20724, 20737, 20752.2, 20761.5, 20784, 20804.5, 20832.5, 20843.5, 20893.5, and 20916.5 to, to add Article 60.5 (commencing with Section 20920) to Chapter 1.5 of Part 3 of Division 2 of, and to repeal and add Sections 20413, 20483, 20501, 20512, 20532, 20674, and 20867 of, the Public Contract Code, and to amend Section 130232 of the Public Utilities Code, relating to public contracts.

[Approved by Governor September 29, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 20107 is added to the Public Contract Code, to read:

20107. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the school district.

(c) A certified check made payable to the school district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

SEC. 2. Section 20111 of the Public Contract Code is amended to read:

20111. (a) The governing board of any school district, in accordance with any requirement established by that governing board pursuant to subdivision (a) of Section 2000, shall let any contracts involving an expenditure of more than fifteen thousand dollars ($15,000) for work to be done or more than twenty-one thousand dollars ($21,000) for materials or supplies to be furnished, sold, or leased to the district, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash

(2) A cashier's check made payable to the school district.

(3) A certified check made payable to the school district.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the school district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the school district beyond 60 days from the time the award is made.

(c) This section applies to all materials and supplies whether patented or otherwise.

SEC. 3. Section 20129 of the Public Contract Code is amended to read:

20129. (a) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash

(2) A cashier's check made payable to the county.

(3) A certified check made payable to the county.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the county.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

(b) The person to whom the contract is awarded shall execute a bond to be approved by the board for the faithful performance of the contract

SEC. 4. Section 20189 is added to the Public Contract Code, to read:

20189. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the local agency.

(c) A certified check made payable to the local agency.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the local agency.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the local agency beyond 60 days from the time the award is made.

SEC 5. Section 20192 of the Public Contract Code is amended to read·

20192. (a) Whenever the cost of construction of any office building, warehouse, or garage of the district constructed under Section 20191 exceeds the sum of two thousand dollars ($2,000), the district shall adopt plans and specifications and working details, as may be proper, and shall advertise for bids for the work in accordance with the plans and specifications so adopted. All bidders shall be afforded an opportunity to examine the plans and specifications and the district shall award the contract to the lowest responsible bidder.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.
(2) A cashier's check made payable to the district.
(3) A certified check made payable to the district.
(4) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

(c) The person or corporation to whom the contract is awarded shall be required to execute a bond for the faithful performance of the contract. The form of the bond shall be approved by the board of directors. In cases of great emergency and when necessary to protect life and property, the board of directors, by unanimous vote of all members present, may without advertising for bids therefor, have the work done by day labor.

SEC. 6. Section 20201.5 is added to the Public Contract Code, to read:

20201.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
(a) Cash.
(b) A cashier's check made payable to the district.
(c) A certified check made payable to the district.
(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 7. Section 20204.3 is added to the Public Contract Code,to read:

20204.3. All bids submitted pursuant to this article shall be presented under sealed cover and shall be accompanied by one of the following forms of security:
(a) Cash.
(b) A cashier's check made payable to the district.
(c) A certified check made payable to the district.
(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 8. Section 20214 is added to the Public Contract Code, to read:

20214. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
(a) Cash.
(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 9. Section 20224.5 is added to the Public Contract Code, to read:

20224.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 10. Section 20234 is added to the Public Contract Code, to read:

20234. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 11. Section 20242 is added to the Public Contract Code, to read:

20242. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 12. Section 20251.5 is added to the Public Contract Code, to read:

20251.5. All bids shall be presented under sealed cover and shall

be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 13. Section 20262 is added to the Public Contract Code, to read:

20262. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 14. Section 20274 is added to the Public Contract Code, to read:

20274. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 15. Section 20284 is added to the Public Contract Code, to read:

20284. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 16. Section 20294 is added to the Public Contract Code, to read:

20294. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 17. Section 20302 is added to the Public Contract Code, to read:

20302. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 18. Section 20314 is added to the Public Contract Code, to read:

20314. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 19. Section 20322 is added to the Public Contract Code, to read:

20322. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful

bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 20. Section 20332 is added to the Public Contract Code, to read:

20332. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 21. Section 20342 is added to the Public Contract Code, to read:

20342. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the board.

(c) A certified check made payable to the board.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the board.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the board beyond 60 days from the time the award is made.

SEC. 22. Section 20352 is added to the Public Contract Code, to read:

20352. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the board.

(c) A certified check made payable to the board.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the board.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the board beyond 60 days from the time the award is made.

SEC. 23. Section 20374 is added to the Public Contract Code, to read:

20374. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 24. Section 20392.5 is added to the Public Contract Code, to read:

20392.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the county.

(c) A certified check made payable to the county.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the county.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

SEC. 25. Section 20405 of the Public Contract Code is amended to read:

20405. (a) The board shall afford all bidders an opportunity to examine the plans, specifications, and working details, and shall award the contract to the lowest responsible bidder. The board may provide by resolution that the bids be opened, examined, and declared by an officer designated in the resolution. The resolution shall require that the bids be opened at a public meeting called by the officer and that the results of the bidding be reported to the board at a subsequent regular board meeting. The notice inviting bids shall state the time and place of the public meeting and the name of the designated officer.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the county.

(3) A certified check made payable to the county.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the county.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the county beyond 60 days from the time the award is made.

(c) The person to whom the contract is awarded shall execute a bond, approved by the board for the faithful performance of the contract. The person shall perform the work in accordance with the plans, specifications, and working details, unless all or any of them are modified by a four-fifths vote of the members of the board. In that case, if the cost of the work is reduced by reason of the modification, the person to whom the contract is awarded shall make

an allowance on the contract price to the extent of the reduction.

SEC. 26. Section 20413 of the Public Contract Code is repealed.

SEC. 27. Section 20413 is added to the Public Contract Code, to read:

20413. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the city.

(c) A certified check made payable to the city.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the city.

The security shall be in an amount equal to at least 10 percent of the amount of the bid. No bid shall be considered unless one of the forms of bidder's security is enclosed with it.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the city beyond 60 days from the time the award is made.

SEC. 28. Section 20471.5 is added to the Public Contract Code, to read:

20471.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidders security:

(a) Cash.

(b) A cashier check made payable to the commission.

(c) A certified check made payable to the commission.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the time the award is made.

SEC. 29. Section 20483 of the Public Contract Code is repealed.

SEC. 30. Section 20483 is added to the Public Contract Code, to read:

20483. (a) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security which amounts to 10 percent of the bid:

(1) Cash.

(2) A cashier's check made payable to the legislative body.

(3) A certified check made payable to the legislative body.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the legislative body.

The amount so posted shall be forfeited to the municipality if the bidder does not, within 15 days after written notice that the contract has been awarded to the bidder, enter into a contract with the municipality for the work. Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the legislative body beyond 60 days from the time the award is made.

(b) The faithful performance of the contract shall be secured by an undertaking in that penal sum as the legislative body requires, but not less than 25 percent of the contract price, satisfactory to the legislative body. When the proceedings include the acquisition or construction of works, appliances, or improvements to be owned, managed or controlled by a public agency other than the municipality making the acquisitions or ordering the work done, the legislative body of the municipality may require that the undertaking also inure to the benefit of the public agency to the extent of its interest in the entire project. The contractor shall also furnish a labor and material bond as required by law in a sum not less than 50 percent of the contract price.

SEC. 31. Section 20501 of the Public Contract Code is repealed.

SEC. 32. Section 20501 is added to the Public Contract Code, to read:

20501. (a) The city council shall, within 10 days after the establishment of the district, invite bids for the making of the improvement by ordering a notice of the invitation to be published by two successive insertions in a daily or weekly newspaper published or circulated in the city and designated by the city council for that purpose. However, if the city council determines that there is only one contractor practically capable of serving the street lighting system to be improved in the manner provided in the plans and specifications contained in the report provided for in Chapter 3 (commencing with Section 18040) of Part 1 of Division 14 of the Streets and Highways Code and that the contractor is subject to the jurisdiction of the Public Utilities Commission of the State of California, the city council may, in its discretion, without competitive bidding, order the improvement to be carried out by the contractor in accordance with rates and rules filed by it from time to time with the Public Utilities Commission.

(b) All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security which amounts to 10 percent of the bid.

(1) Cash.

(2) A cashier's check made payable to the city.

(3) A certified check made payable to the city.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the city.

The security shall be forfeited to the city in case the bidder depositing it does not, within 15 days after the notice that the contract has been awarded to him or her, enter into a contract with the city for making the improvement, the faithful performance of which shall be secured by an undertaking in those penal sums as the city council shall require, with sureties satisfactory to that body. In any case where competitive bidding is required, the contract shall be awarded to the lowest responsible bidder. Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that

security be held by the city beyond 60 days from the time the award is made.

SEC. 33. Section 20512 of the Public Contract Code is repealed.

SEC. 34. Section 20512 is added to the Public Contract Code, to read:

20512. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security which amounts to 10 percent of the bid:

(a) Cash.

(b) A cashier's check made payable to the city.

(c) A certified check made payable to the city.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the city.

The check or bond shall be forfeited to the city if the bidder depositing it does not within 10 days after the publication of a notice of award of the contract to him or her, enter into the necessary contract with the city. Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the city beyond 60 days from the time the award is made.

SEC. 35. Section 20522 is added to the Public Contract Code, to read:

20522. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessul bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 36. Section 20532 of the Public Contract is repealed.

SEC. 37. Section 20532 is added to the Public Contract Code, to read:

20532. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 38. Section 20551.5 is added to the Public Contract Code, to read:

20551.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 39. Section 20564.5 is added to the Public Contract Code, to read:

20564.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 40. Section 20584.5 is added to the Public Contract Code, to read

20584.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 41. Section 20602.5 is added to the Public Contract Code, to read:

20602.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from

the time the award is made.

SEC. 42. Section 20624 is added to the Public Contract Code, to read:

20624. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 43. Section 20633.5 is added to the Public Contract Code, to read:

20633.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 44. Section 20642.5 is added to the Public Contract Code, to read:

20642.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security.

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 45. Section 20651 5 is added to the Public Contract Code, to read:

20651.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 46. Section 20674 of the Public Contract Code is repealed.

SEC. 47. Section 20674 is added to the Public Contract Code, to read:

20674. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the public entity.

(c) A certified check made payable to the public entity.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the public entity.

Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids by written request for the withdrawal of the bid filed with the public leaseback corporation. The request shall be executed by the bidder or the bidder's duly authorized representative. The withdrawal of a bid does not prejudice the right of the bidder to submit a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid shall not be received after that time.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the public entity beyond 60 days from the time the award is made.

SEC. 48. Section 20685.5 is added to the Public Contract Code, to read:

20685.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 49. Section 20688.25 is added to the Public Contract Code, to read:

20688.25. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the local agency.

(c) A certified check made payable to the local agency.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the agency.

Upon an award to the lowest bidder, the security of an unsuccessful

bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the local agency beyond 60 days from the time the award is made.

SEC. 50. Section 20694.5 is added to the Public Contract Code, to read:

20694.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the commission.

(c) A certified check made payable to the commission.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the time the award is made.

SEC. 51. Section 20724 is added to the Public Contract Code, to read:

20724. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 52. Section 20737 is added to the Public Contract Code, to read:

20737. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 53. Section 20752.2 is added to the Public Contract Code, to read:

20752.2. Notwithstanding Section 20751, all bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 54. Section 20761.5 is added to the Public Contract Code, to read:

20761.5. Notwithstanding Section 20761, all bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 55. Section 20784 is added to the Public Contract Code, to read:

20784. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 56. Section 20804.5 is added to the Public Contract Code, to read:

20804.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 57. Section 20832.5 is added to the Public Contract Code, to read:

20832.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 58. Section 20843.5 is added to the Public Contract Code, to read:

20843.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 59. Section 20867 of the Public Contract Code is repealed.

SEC. 60. Section 20867 is added to the Public Contract Code, to read:

20867. The legislative body shall award the contract for doing the work to the lowest responsible bidder. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the public entity.

(c) A certified check made payable to the public entity.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the public entity.

The bids shall be delivered, opened, and award of contract made, all as provided by Chapter 9 (commencing with Section 5240) of Part 3 of Division 7 of the Streets and Highways Code, except that no notice of award shall be published. Upon the award being made, the superintendent of streets shall enter into a contract with the person to whom the contract was awarded for doing the work described in the notice inviting bids, and at the price stated in the bid. The contractor shall execute a bond in the manner required by Section 5254 of the Streets and Highways Code.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the public entity beyond 60 days from the time the award is made.

SEC. 61. Section 20893.5 is added to the Public Contract Code, to read:

20893.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the local agency.

(c) A certified check made payable to the local agency.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the local agency.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the local agency beyond 60 days from the time the award is made.

SEC. 62. Section 20916.5 is added to the Public Contract Code, to read:

20916.5. All bids shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the district.

(c) A certified check made payable to the district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

SEC. 63. Article 60.5 (commencing with Section 20920) is added to Chapter 1.5 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 60.5. Water District Contract Bids

20920. All bids requested by an agency or district covered by this chapter shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(a) Cash.

(b) A cashier's check made payable to the agency or district.

(c) A certified check made payable to the agency or district.

(d) A bidder's bond executed by an admitted surety insurer, made payable to the agency or district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the agency or district beyond 60 days from the time the award is made

SEC. 64. Section 130232 of the Public Utilities Code is amended to read.

130232. (a) The purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars

($25,000), shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 10 days before the date for the receipt of the bids. The commission, at its discretion, may reject any and all bids and readvertise.

(b) Whenever the expected expenditure required exceeds one thousand dollars ($1,000), but not twenty-five thousand dollars ($25,000), the commission shall obtain a minimum of three quotations, either written or oral, which permit prices and terms to be compared.

(c) Where the expenditure required by the bid price is less than fifty thousand dollars ($50,000), the executive director may act for the commission.

(d) All bids submitted pursuant to this section shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

(1) Cash.

(2) A cashier's check made payable to the commission.

(3) A certified check made payable to the commission.

(4) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the time the award is made.

SEC. 65. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1164

An act to add and repeal Section 380.3 of the Streets and Highways Code, relating to highways, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 380.3 is added to the Streets and Highways Code, to read:

380.3. There will be increased motor vehicle traffic on San Pablo Avenue in the County of Contra Costa and the Cities of El Cerrito, Richmond, San Pablo, Pinole, and Hercules because traffic will be detoured onto San Pablo Avenue during construction work on State Route 80 to convert the existing shoulder to additional traffic lanes. Because of the increased traffic caused by the detour, the department may pay annually to that county and each of those cities the added costs of maintenance and operation of San Pablo Avenue.

This section shall remain in effect only until the department certifies to the Secretary of State that construction is complete on the project on State Route 80 in Contra Costa County to convert the existing shoulder to additional traffic lanes, and as of the date of that certification is repealed.

SEC. 2. Section 380.3 of the Streets and Highways Code shall become effective only if Assembly Bill 488 of the 1989–90 Regular Session is enacted and becomes effective.

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 repairs to San Pablo Avenue caused by the increased traffic detoured from State Route 80 may commence as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1165

An act to amend Section 25755 of the Business and Professions Code, to amend Sections 39671 and 72330 of the Education Code, to amend Section 3332 of the Food and Agricultural Code, to amend Sections 3301, 9194.5, 14613, and 74368 of the Government Code, to amend Section 12020 of the Health and Safety Code, to amend Sections 488.5, 557.5, 557.6, and 669.5 of the Insurance Code, to amend Section 3600.3 of the Labor Code, to amend Sections 148.5, 190.2, 409.5, 409.6, 830, 830.1, 830.2, 830.3, 830.5, 830.6, 830.7, 830.8, 830.9, 830.10, and 12028.5 of, to add Sections 830.32, 830.33, 830.34, 830.35,

830.36, 830.37, 830.38, and 13526 to, to amend and renumber Section 830.32, to repeal and add Sections 830.31 and 830.4 of, and to add Article 4 (commencing with Section 13540) to Chapter 1 of Title 4 of Part 4 of, the Penal Code, to amend Section 10334 of the Public Contract Code, to amend Section 4156 of the Public Resources Code, to amend Sections 8226, 12820, 22558, and 30504 of the Public Utilities Code, to amend Section 25258 of the Vehicle Code, and to amend Sections 4313 and 4493 of the Welfare and Institutions Code, relating to peace officers.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 25755 of the Business and Professions Code is amended to read:

25755. The director and the persons employed by the department for the administration and enforcement of this division are peace officers in the enforcement of the penal provisions of this division, the rules of the department adopted under the provisions of this division, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors, and such persons are authorized, while acting as peace officers, to enforce any penal provisions of law while they are in, on, or about any licensed premises in the course of their employment.

The director, the persons employed by the department for the administration and enforcement of this division, and peace officers listed in Section 830.1 of the Penal Code may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

Members of the California State Police and peace officers of the Department of Parks and Recreation, as defined in subdivisions (b) and (g) of Section 830.2 of the Penal Code may, in enforcing the provisions of this division, visit and inspect the premises of any licensee located on state property at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

SEC. 1.1. Section 25755 of the Business and Professions Code is amended to read:

25755. The director and the persons employed by the department for the administration and enforcement of this division are peace officers in the enforcement of the penal provisions of this division, the rules of the department adopted under the provisions of this division, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession,

giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors, and such persons are authorized, while acting as peace officers, to enforce any penal provisions of law while in the course of their employment.

The director, the persons employed by the department for the administration and enforcement of this division, and peace officers listed in Section 830.1 of the Penal Code may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

Members of the California State Police and peace officers of the Department of Parks and Recreation, as defined in subdivisions (b) and (g) of Section 830.2 of the Penal Code may, in enforcing the provisions of this division, visit and inspect the premises of any licensee located on state property at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

SEC. 2. Section 39671 of the Education Code is amended to read:

39671. Persons employed and compensated as members of a police department of a school district, when appointed and duly sworn, are peace officers, for the purposes of carrying out their duties of employment pursuant to Section 830.32 of the Penal Code.

SEC. 3 Section 72330 of the Education Code is amended to read:

72330. The governing board of a community college district may establish a community college police department, under the supervision of a community college chief of police, and employ, in accordance with the provisions of Chapter 4 (commencing with Section 88000) of Part 51 that personnel as may be necessary to enforce the law on or near the campus of the community college and on or near other grounds or properties owned, operated, controlled, or administered by the community college or by the state acting on behalf of the community college. Each campus of a multicampus community college district may designate a chief of police.

Persons employed and compensated as members of a community college police department, when so appointed and duly sworn, are peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

SEC. 4. Section 3332 of the Food and Agricultural Code is amended to read:

3332. The board has authority to do any of the following:

(a) Contract.

(b) Accept funds or gifts of value from the United States or any person to aid in carrying out the purposes of this part.

(c) Conduct or contract for programs, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency.

(d) Establish and maintain a bank checking account or a savings and loan association account, approved by the Director of Finance in accordance with Sections 16506 and 16605 of the Government

Code, for depositing funds appropriated to the California Exposition and State Fair pursuant to subdivision (a) of Section 19622 of the Business and Professions Code. The Department of Finance shall audit the account at the end of each fiscal year.

(e) Make or adopt all necessary orders, rules, or regulations for governing the activities of the California Exposition and State Fair.

(f) Delegate to the officers and employees of the California Exposition and State Fair the authority to appoint civil service personnel according to state civil service procedures.

(g) Delegate to the officers and employees of the California Exposition and State Fair the exercise of powers vested in the board as the board may deem desirable for the orderly management and operation of the California Exposition and State Fair.

(h) Appoint all necessary marshals and police to keep order and preserve peace at the California Exposition and State Fair premises on a year-round basis who shall have the powers of peace officers specified in Section 830.2 of the Penal Code. A member of the California State Police Division may be employed as a marshal or police officer while off duty from his or her regular employment, subject to those conditions as may be set forth by the Chief of the California State Police. At least 75 percent of the persons appointed pursuant to this subdivision shall possess the basic certificate issued by the Commission on Peace Officers Standards and Training. The remaining 25 percent may be appointed if the person has completed a Peace Officer Standards and Training certified academy or possesses a Level One Reserve Certificate (as defined in Section 832.6 of the Penal Code).

(i) Lease, with the approval of the Department of General Services, any of its property for any purpose for any period of time.

(j) Use or manage any of its property, with the approval of the Department of General Services, jointly or in connection with any lessee or sublessee, for any purpose approved by the board.

SEC. 5. Section 3301 of the Government Code is amended to read:

3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 of the Penal Code.

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that such stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

SEC. 6. Section 9194.5 of the Government Code is amended to read:

9194.5. The Sergeant at Arms and Assistant Sergeants at Arms of each house shall have the powers and authority conferred by law upon peace officers listed in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code in all parts of the state in carrying out their duties, and shall not be liable to civil action for their acts in carrying out the orders of a Member of the Legislature presiding over any legislative proceeding, including sessions of the Legislature or either house thereof and hearings of legislative committees, or in carrying out the orders of a member to have any person removed from the office of the member, if the Sergeant at Arms or Assistant Sergeant at Arms acts without malice and in the reasonable belief that the member has the authority to issue the order.

SEC. 7. Section 14613 of the Government Code is amended to read:

14613. There is in the Department of General Services the California State Police Division.

The director shall appoint members and employees of the California State Police Division as may be necessary to protect and provide police services for the state buildings and grounds and occupants thereof Members of the California State Police Division have the powers of peace officers as defined in the Penal Code.

Members of the California State Police Division consist of the following: the chief, inspectors, captains, lieutenants, sergeants, officers, and security officers. All other persons in the California State Police Division are considered employees.

The California State Police Division may provide for the physical security of any current or former constitutional officer of the state and any current or former legislator of the state.

Upon the request of the Chief Justice, the director, through the California State Police Division, may provide appropriate protective services to any current or former member of the state courts of appeal and the California Supreme Court.

SEC. 8. Section 74368 of the Government Code is amended to read:

74368. The marshal may make the following appointments:

(a) One assistant marshal.

(b) Four captains.

(c) Four lieutenants.

(d) Nineteen sergeants.

(e) One hundred sixty-three deputy marshals.

Any deputy marshal who may be assigned by the marshal to one of seven positions designated as lead deputy shall receive, while serving in that capacity, biweekly compensation at a rate 5 percent higher than that received by the deputy.

The marshal may, at his or her discretion, fill a deputy marshal or court service officer position by accepting a lateral transfer from

another California peace officer agency. The transferee shall have completed a California P.O.S.T. certified basic academy and been employed for at least one year in a position enumerated in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, or 830.4 of the Penal Code within the past three years.

(f) One administrative secretary I, II, or III.

(g) One administrative services manager I, II, or III or administrative assistant III.

(h) Twenty intermediate typists.

(i) Six senior typists.

(j) Thirty-five field service officers.

Notwithstanding any other provisions of this article, in no event shall a field service officer's salary be less than 65 percent of the salary of a deputy marshal at the corresponding pay step. The field service officer is a peace officer trainee position which requires appointees to be at least 18 years of age and meet the qualifications and standards prescribed for deputy marshals. At the time an incumbent in the class of field service officer attains the age of 21, he or she may be appointed by the marshal to a position in the class of deputy marshal or court service officer, provided such position is open, without further qualification or examination.

A field service officer shall receive 65 percent of the uniform allowance prescribed for deputy marshals. In the event that a field service officer is appointed to the class of deputy marshal or court service officer, he or she shall receive the amount of reimbursement of the cost of required uniforms and equipment prescribed for a newly hired deputy marshal or court service officer, less any reimbursement received by him or her for the cost of required field service officer uniforms and equipment.

(k) One junior typist. Each vacancy occurring in this class shall cause a corresponding reduction in the number of junior typists hereby authorized, provided, however, that such vacancy shall increase by one, a position in the class intermediate typist under subdivision (h).

(*l*) Nine legal procedures clerks III.

(m) Thirty legal procedures clerks II or I.

(n) Sixty court service officers. In no event shall a court service officer's salary be less than 80 percent of a deputy marshal at the corresponding pay step. A court service officer shall receive the same uniform allowance prescribed for a deputy marshal, under the same conditions prescribed for deputy marshals. The marshal may appoint a court service officer to a vacant position of deputy marshal without further qualification or examination. In the event that a court service officer is appointed to the class of deputy marshal, he or she shall receive the amount of reimbursement prescribed for a newly hired deputy marshal, less any reimbursement received by him or her for the cost of required court service officer uniforms and equipment. Court service officers shall be peace officers pursuant to Section 830.4 of the Penal Code. Notwithstanding any other provision of law, court

service officers shall be general members of the county employees retirement system.

Any court service officer who meets length of service, educational and performance requirements established by the marshal and approved by the county personnel director may receive a biweekly compensation at a rate 7½ percent higher than that otherwise received by a court service officer. The number of court service officer positions so compensated shall not exceed one-half the total number of court service officers then employed by the marshal.

(o) Any person specified in subdivisions (f), (h), and (i), who may be assigned by the marshal to one of the positions designated as executive secretary or administrative-personnel secretary shall receive, while serving in that capacity, biweekly compensation at a rate 10 percent higher than that specified for such person's class and step.

(p) Two supervising legal services clerks.

(q) Three communications dispatchers I or II.

(r) Two administrative assistants III, II, I, or trainee.

(s) One EDP coordinator, or senior systems analyst.

(t) Notwithstanding Section 74369, up to 15 extra help positions (hourly rate) to be appointed at a level as determined by and serve at the pleasure of the marshal. Such appointments shall be temporary for a period not to exceed six months, plus one additional period at the marshal's option, not to exceed six months. Notwithstanding any other provisions of this section, the marshal may fill these positions with persons employed for less than 91 working days during a fiscal year on a part-time basis.

(u) Notwithstanding Section 74369, the marshal may appoint up to six temporary extra help marshal student workers I, II, or III who shall be paid at an hourly rate and shall serve at the pleasure of the marshal. A marshal student worker I, II, or III shall receive an hourly salary at the rate equal to that specified for the class of student worker I, II, or III respectively in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a marshal student worker class may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(v) Two associate systems analysts or assistant systems analysts.

(w) Notwithstanding Section 74369, up to five provisional workers may be appointed by and serve at the pleasure of the marshal. The class of provisional worker provides for temporary appointments to positions in classes not listed in Section 74370 pending a review and evaluation of the duties of these positions by the marshal, and the establishment of specific classes as provided in this subdivision. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the marshal as to the establishment of such classes. The rate of pay for each individual employed in this class shall be within the range

proposed for the class pending establishment, at a rate determined by the marshal following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to provisional workers shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the marshal and the board of supervisors in accordance with established county personnel and budgetary procedures. The marshal may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying provisional worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the marshal and the board of supervisors.

(x) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (s), inclusive, (u), (v) and (w) of this section may be increased by up to 100 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to such positions shall be the same as those applicable to the class of such positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature. This subdivision shall remain in operation only until January 1 of the second year following the year in which it becomes operative, and as of such date is inoperative.

SEC. 9 Section 12020 of the Health and Safety Code is amended to read:

12020. The chief and the issuing authority, as defined in Sections 12003 and 12007, respectively, shall in their areas of jurisdiction enforce the provisions of this part and the regulations adopted by the State Fire Marshal pursuant to this part.

Any peace officer, as defined in Sections 830.1, 830.2, subdivisions (a), (b), (e), (j), and (k) of Section 830.3 of the Penal Code, may

enforce the provisions of this part.

SEC. 10. Section 488.5 of the Insurance Code is amended to read:

488.5. No insurer shall, in issuing or renewing a private automobile insurance policy to a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, increase the premium on that policy for the reason that the insured or applicant for insurance has been involved in an accident while operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code, in performance of his or her duty during the hours of his or her employment.

As used in this section:

(a) "Peace officer" means every person defined in Section 830.1, subdivisions (a), (b), (c), (d), (e), (g), and (h) of Section 830.2, subdivisions (a), (b), and (d) of Section 830.31, subdivisions (a) and (b) of Section 830.32, subdivisions (a), (b), (c), and (d) of Section 830.33, subdivision (b) of Section 830.5, and Section 830.6, of the Penal Code.

(b) "Policy" shall have the same meaning as defined in subdivision (a) of Section 660.

SEC. 11. Section 557.5 of the Insurance Code is amended to read:

557.5. No peace officer, member of the California Highway Patrol, or firefighter shall be required to report any accident in which he or she is involved while operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code, in performance of his or her duty during the hours of his or her employment, to any person who has issued that peace officer, member of the California Highway Patrol, or firefighter a private automobile insurance policy.

As used in this section:

(a) "Peace officer" means every person defined in Section 830.1, subdivisions (a), (b), (c), (d), (e), (g), and (h) of Section 830.2, subdivisions (a), (b), and (d) of Section 830.31, subdivisions (a) and (b) of Section 830.32, subdivisions (a), (b), (c), and (d) of Section 830.33, subdivision (b) of Section 830.5, and Section 830.6, of the Penal Code.

(b) "Policy" shall have the same meaning as defined in subdivision (a) of Section 660.

SEC. 12. Section 557.6 of the Insurance Code is amended to read:

557.6. Any peace officer as defined pursuant to this section who has been involved in an accident shall submit to his or her private automobile insurer within 30 days of the accident his or her written declaration under penalty of perjury stating whether or not at the time of the accident he or she was operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code, in performance of his or her duty during the

hours of his or her employment. In lieu of a written declaration, the peace officer may submit to the private automobile insurer a copy of the incident report filed by the peace officer with his or her employer

As used in this section, "peace officer" means every person defined in Section 830.1, subdivisions (a), (b), (c), (d), (e), (g), and (h) of Section 830.2, subdivisions (a), (b), and (d) of Section 830.31, subdivisions (a) and (b) of Section 830.32, subdivisions (a), (b), (c), and (d) of Section 830.33, subdivision (b) of Section 830.5, and Section 830.6, of the Penal Code.

SEC. 13. Section 669.5 of the Insurance Code is amended to read:

669.5. No insurer shall fail to renew any private automobile insurance policy of a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, for the reason that the insured has been involved in an accident while operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) of Section 165 of the Vehicle Code, in performance of his or her duty during the hours of his or her employment. As used in this section, "peace officer" shall have the same meaning as defined in Section 830 1 of the Penal Code, subdivisions (a), (b), (c), (d), (e), (g) and (h) of Section 830.2 of the Penal Code, subdivisions (a), (b), and (d) of Section 830.31 of the Penal Code, and subdivision (d) of Section 830.33 of the Penal Code.

SEC. 14. Section 3600.3 of the Labor Code is amended to read:

3600.3. (a) For the purposes of Section 3600, an off-duty peace officer, as defined in subdivision (b), who is performing, within the jurisdiction of his or her employing agency, a service he or she would, in the course of his or her employment, have been required to perform if he or she were on duty, is performing a service growing out of and incidental to his or her employment and is acting within the course of his or her employment if, as a condition of his or her employment, he or she is required to be on call within the jurisdiction during off-duty hours.

(b) As used in subdivision (a), "peace officer" means those employees of the Department of Forestry named as peace officers for purposes of subdivision (b) of Section 830.37 of the Penal Code.

(c) This section does not apply to any off-duty peace officer while he or she is engaged, either as an employee or as an independent contractor, in any capacity other than as a peace officer.

SEC. 15 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 (e) of 830.3, Section 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 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. 16. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found under Section 190.4, to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was previously convicted of murder in the first degree or second degree For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his or her act or acts would create a great risk of death to a human being or human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or cause to be mailed or delivered and the defendant knew or reasonably should have known that his or her act or acts would create a great risk of death to a human being or human beings.

(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11 or 830.12, who, while engaged in the course of the performance of his or her duties was intentionally killed, and the defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his or her duties was intentionally killed, and the defendant knew or reasonably should have known that the victim was a federal law enforcement officer or agent, engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter as defined in Section 245.1, who while engaged in the course of the performance of his or her duties was intentionally killed, and the defendant knew or reasonably should have known that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal proceeding, and the killing was not committed during the commission, or attempted commission of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal proceeding.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties

(12) The victim was a judge or former judge of any court of record in the local, state or federal system in the State of California or in any other state of the United States and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

(13) The victim was an elected or appointed official or former official of the Federal Government, a local or State government of California, or of any local or state government of any other state in the United States and the killing was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional

depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was an accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211.

(ii) Kidnapping in violation of Sections 207 and 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of Section 447.

(ix) Train wrecking in violation of Section 219.

(18) The murder was intentional and involved the infliction of torture. For the purpose of this section torture requires proof of the infliction of extreme physical pain no matter how long its duration.

(19) The defendant intentionally killed the victim by the administration of poison.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in paragraph (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (19) of subdivision (a) of this section has been charged and specially found under Section 190.4 to be true.

The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

SEC. 17. 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 (g) of Section 830.2, 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 (h) 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. 18. Section 409.6 of the Penal Code is amended to read:

409.6. (a) Whenever a menace to the public health or safety is created by an avalanche, officers of the California Highway Patrol, California State Police, police departments or sheriff's office, any officer or employee of the Department of Forestry designated a peace officer by subdivision (h) of Section 830.2, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (g) of Section 830.2, 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 such officer to enter or remain within the closed area. If an avalanche 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, or sheriff's office or officers of the Department of Forestry designated as peace officers by subdivision (h) 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 hazardous conditions created by an avalanche to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not such field command post or other command post is located near the

avalanche.

(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within such area, or any unauthorized person who willfully remains within an area closed pursuant to subdivision (a) or (b), after receiving notice to evacuate or leave from a peace officer named in subdivision (a) or (b) shall be guilty of a misdemeanor. If necessary, a peace officer named in subdivision (a) or (b) may use reasonable force to remove from the closed area any unauthorized person who willfully remains within such area after receiving notice to evacuate or leave.

(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. 19. Section 830 of the Penal Code is amended to read:

830. Any person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a peace officer is a peace officer, and notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer. The restriction of peace officer functions of any public officer or employee shall not affect his or her status for purposes of retirement

SEC 20. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid in that capacity, of a county, any police officer of a city, any police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, regularly employed and paid in that capacity, of a judicial district, or any inspector or investigator regularly employed and paid in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and those investigators who are designated by the Attorney

General are peace officers. The authority of these peace officers extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

SEC. 20.1. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid in that capacity, of a county, any police officer of a city, any police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, regularly employed and paid in that capacity, of a judicial district, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator regularly employed and paid in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police, or person authorized by him to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and those investigators who are designated by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

SEC. 21. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the California Highway Patrol, provided that the primary duty of the peace officer shall be the enforcement of the provisions of the Vehicle Code or of any other law relating to the use or operation of vehicles upon the highways, as that duty is set forth in the Vehicle Code.

(b) Any member of the California State Police Division, provided that the primary duty of the peace officer shall be to provide police services for the protection of state officers, and the protection of state properties and occupants thereof, as set forth in the Government Code.

(c) A member of the University of California Police Department

appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(d) A member of the California State University and College Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(e) Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided that the primary duty of the peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of those persons, and the coordination of those activities with other criminal justice agencies.

(f) Members of the Wildlife Protection Branch of the Department of Fish and Game, provided that the primary duty of those deputies shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(g) Officers of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(h) The Director of Forestry and employees or classes of employees of the Department of Forestry designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(i) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair, pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section.

SEC. 21.1. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the California Highway Patrol, provided that the primary duty of the peace officer shall be the enforcement of the provisions of the Vehicle Code or of any other law relating to the use or operation of vehicles upon the highways, as that duty is set forth in the Vehicle Code.

(b) Any member of the California State Police Division, provided that the primary duty of the peace officer shall be to provide police services for the protection of state officers, and the protection of state properties and occupants thereof, as set forth in the Government Code.

(c) A member of the University of California Police Department

appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(d) A member of the California State University and College Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(e) Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided that the primary duty of the peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of those persons, and the coordination of those activities with other criminal justice agencies.

(f) Members of the Wildlife Protection Branch of the Department of Fish and Game, provided that the primary duty of those deputies shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(g) Officers of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(h) The Director of Forestry and employees or classes of employees of the Department of Forestry designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(i) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair, pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section.

(j) Persons employed by the Department of Alcoholic Beverage Control as described in subdivision (a) of Section 830.3, provided that the person has successfully completed a four-week course in the area of narcotics enforcement approved by the Commission on Peace Officer Standards and Training.

SEC. 22. Section 830 3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by

their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Investigators of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(g) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms

(i) The Chief of the Bureau of Fraudulent Claims of the

Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department, designated by the director of the department, provided that the primary duty of those peace

officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

SEC. 22.1. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Investigators of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(g) All investigators of the Division of Labor Standards

Enforcement, as designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the Office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers

designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department, designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) Emergency services coordinators and coordination planners of the Office of Emergency Services when actually engaged in a response to an emergency on behalf of the office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not be authorized by this subdivision to carry firearms on or off duty.

(s) Criminalists of the Department of Justice. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not be authorized by this subdivision to carry firearms either on or off duty.

SEC 22.2. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by their employing agencies:

(a) Except as provided in subdivision (j) of Section 830.2, persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and

Professions Code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Investigators of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(g) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated

by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the Office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department, designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

SEC. 22.3. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by their employing agencies:

(a) Except as provided in subdivision (j) of Section 830.2, persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Investigators of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(g) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the

Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the Office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department, designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) Emergency services coordinators and coordination planners of the Office of Emergency Services when actually engaged in a response to an emergency on behalf of the office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not be authorized by this subdivision to carry firearms on or off duty.

(s) Criminalists of the Department of Justice. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not be authorized by this subdivision to carry firearms either on or off duty.

SEC. 23. Section 830.31 of the Penal Code is repealed.

SEC. 24. Section 830.31 is added to the Penal Code, to read:

830.31. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Safety police officers of the County of Los Angeles, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(b) Persons designated by a local agency as park rangers, and regularly employed and paid in those capacities, if the primary duty of the peace officer is the protection of park and other property of the agency and the preservation of the peace therein.

(c) Security officers of the Department of General Services of the City of Los Angeles designated by the general manager of the department, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency. Notwithstanding any other provision of law, the peace officers designated by this subdivision shall not be authorized to carry firearms, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(d) Housing authority patrol officers employed by the housing authority of a city, district, county, or city and county or employed by the police department of a city and county, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing

agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 25. Section 830.32 is added to the Penal Code, to read:

830.32. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Goverment Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of a community college police department appointed pursuant to Section 72330 of the Education Code, if the primary duty of the peace officer is the enforcement of the law as prescribed in Section 72330 of the Education Code.

(b) Persons employed as members of a police department of a school district pursuant to Section 39670 of the Education Code, if the primary duty of the peace officer is the enforcement of the law as prescribed in Section 39670 of the Education Code.

SEC. 25.5. Section 830.32 of the Penal Code, as added by Senate Bill No. 1578, is amended and renumbered to read:

830.39. (a) Any regularly employed law enforcement officer of the Oregon State Police, the Nevada Department of Motor Vehicles and Public Safety, or the Arizona Department of Public Safety is a peace officer in this state if all of the following conditions are met:

(1) The officer is providing, or attempting to provide, law enforcement services within this state on the state or county highways and areas immediately adjacent thereto, within a distance of up to 50 statute miles of the contiguous border of this state and the state employing the officer.

(2) The officer is providing, or attempting to provide, law enforcement services pursuant to either of the following:

(A) In response to a request for services initiated by a member of the California Highway Patrol.

(B) In response to a reasonable belief that emergency law enforcement services are necessary for the preservation of life, and a request for services by a member of the Department of the California Highway Patrol is impractical to obtain under the circumstances. In those situations, the officer shall obtain authorization as soon as practical.

(3) The officer is providing, or attempting to provide, law enforcement services for the purpose of assisting a member of the California Highway Patrol to provide emergency service in response to misdemeanor or felony criminal activity, pursuant to the authority of a peace officer as provided in subdivision (a) of Section 830.2, or, in the event of highway-related traffic accidents, emergency incidents or other similar public safety problems, whether or not a member of the California Highway Patrol is present at the scene of the event. Nothing in this section shall be construed to confer upon

the officer the authority to enforce traffic or motor vehicle infractions.

(4) An agreement pursuant to Section 2403.5 of the Vehicle Code is in effect between the Department of the California Highway Patrol and the agency of the adjoining state employing the officer, the officer acts in accordance with that agreement, and the agreement specifies that the officer and employing agency of the adjoining state shall be subject to the same civil immunities and liabilities as a peace officer and his or her employing agency in this state.

(5) The officer receives no separate compensation from this state for providing law enforcement services within this state.

(6) The adjoining state employing the officer confers similar rights and authority upon a member of the California Highway Patrol who renders assistance within that state.

(b) Notwithstanding any other provision of law, any person who is acting as a peace officer in this state in the manner described in this section shall be deemed to have met the requirements of Section 1031 of the Government Code and the selection and training standards of the Commission on Peace Officer Standards and Training if the officer has completed the basic training required for peace officers in his or her state.

(c) In no case shall a peace officer of an adjoining state be authorized to provide services within a California jurisdiction during any period in which the regular law enforcement agency of the jurisdiction is involved in a labor dispute.

SEC. 26. Section 830.33 is added to the Penal Code, to read:

830.33. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties with respect to patrons, employees, and properties of the district.

(b) Harbor or port police regularly employed and paid as such by a county, city, or district other than peace officers authorized under Section 830.1, and the port warden and special officers of the Harbor Department of the City of Los Angeles, if the primary duty of the peace officer is the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(c) Transit police officers of a county, city, or district, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(d) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, and administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(e) Any railroad policeman commissioned by the Governor pursuant to Section 8226 of the Public Utilities Code, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 27. Section 830.34 is added to the Penal Code, to read:

830.34. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Persons designated as a security officer by a municipal utility district pursuant to Section 12820 of the Public Utilities Code, if the primary duty of the officer is the protection of the properties of the utility district and the protection of the persons thereon.

(b) Persons designated as a security officer by a county water district pursuant to Section 30547 of the Water Code, if the primary duty of the officer is the protection of the properties of the county water district and the protection of the persons thereon.

(c) The security director of the public utilities commission of a city and county, if the primary duty of the security director is the protection of the properties of the commission and the protection of the persons thereon.

SEC. 28. Section 830.35 is added to the Penal Code, to read:

830.35. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and

under terms and conditions specified by their employing agency.

(a) A welfare fraud investigator or inspector, regularly employed and paid in that capacity by a county, if the primary duty of the peace officer is the enforcement of the provisions of the Welfare and Institutions Code.

(b) A child support investigator or inspector, regularly employed and paid in that capacity by a district attorney's office, if the primary duty of the peace officer is the enforcement of the provisions of the Welfare and Institutions Code and Section 270.

(c) The coroner and deputy coroners, regularly employed and paid in that capacity, of a county, if the primary duty of the peace officer are those duties set forth in Sections 27469 and 27491 to 27491.4, inclusive, of the Government Code.

SEC. 29. Section 830.36 is added to the Penal Code, to read:

830.36. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) The Sergeant-at-Arms of each house of the Legislature, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency

(b) Baliffs of the Supreme Court and of the courts of appeal, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(c) Court service officer in a county of the third class, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 30. Section 830.37 is added to the Penal Code, to read:

830.37. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of an arson-investigating unit, regularly paid and employed in that capacity, of a fire department or fire protection agency of a county, city, city and county, district, or the state, if the

primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud.

(b) Members other than members of an arson investigating unit, regularly paid and employed in that capacity, of a fire department or fire protection agency of a county, city, city and county, district, or the state, if the primary duty of these peace officers, when acting in that capacity, is the enforcement of laws relating to fire prevention or fire suppression.

(c) Voluntary fire wardens as are designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(d) Firefighter/security guards by the Military Department, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

SEC. 30.5. Section 830.38 is added to the Penal Code, to read:

830.38. The officers of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services appointed pursuant to Section 4313 or 4493 of the Welfare and Institutions Code, are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code provided that the primary duty of the peace officers shall be the enforcement of the law as set forth in Sections 4311, 4313, 4491, and 4493 of the Welfare and Institutions Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

SEC. 31. Section 830.4 of the Penal Code is repealed.

SEC. 32. Section 830.4 is added to the Penal Code, to read:

830.4. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their duties under the conditions as specified by statute. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) Members of the California National Guard have the powers of peace officers when they are involved in any or all of the following:

(1) Called or ordered into active state service by the Governor pursuant to the provisions of Section 143 or 146 of the Military and Veterans Code.

(2) Serving within the area wherein military assistance is required.

(3) Directly assisting civil authorities in any of the situations

specified in Section 143 or 146.

The authority of the peace officer under this subdivision extends to the area wherein military assistance is required as to a public offense committed or which there is reasonable cause to believe has been committed within that area. The requirements of Section 1031 of the Government Code are not applicable under those circumstances.

(b) Guards and messengers of the Treasurer's office when performing assigned duties as a guard or messenger.

(c) Security officers of the Department of Justice when performing assigned duties as security officers.

(d) Security officers of the California State Police Division. Notwithstanding any other provision of law, the act which designated the persons described in this subdivision as peace officers shall serve only to define those persons as peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers, and duties, and there shall be no change in the status of those persons for purposes of retirement, workers' compensation or similar injury or death benefits, or other employee benefits

(e) Security officers of Hastings College of the Law. These officers shall have authority of peace officers only within the City and County of San Francisco. Notwithstanding any other provisions of law, the peace officers designated by this subdivision shall not be authorized by this subdivision to carry firearms either on or off duty Notwithstanding any other provision of law, the act which designated the persons described in this subdivision as peace officers shall serve only to define those persons as peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers, and duties, and there shall be no change in the status of those persons for purposes of retirement, workers' compensation or similar injury or death benefits, or other employee benefits.

SEC. 33. Section 830.5 of the Penal Code is amended to read:

830.5. The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Sections 8597, 8598, and 8617 of the Government Code. Except as specified in this section, these peace officers may carry firearms only if authorized and under those terms and conditions specified by their employing agency:

(a) A parole officer of the Department of Corrections or the Department of the Youth Authority, probation officer, or deputy probation officer, or a board coordinating parole agent employed by the Youthful Offender Parole Board. Except as otherwise provided in this subdivision, the authority of these parole or probation officers shall extend only as follows:

(1) To conditions of parole or of probation by any person in this state on parole or probation.

(2) To the escape of any inmate or ward from a state or local

institution.

(3) To the transportation of such persons.

(4) To violations of any penal provisions of law which are discovered in the course of and arise in connection with his or her employment.

Any parole officer of the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board is authorized to carry firearms but only as determined by the director on a case-by-case or unit-by-unit basis and only under those terms and conditions specified by the director or chairperson.

(b) A correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections or any medical technical assistant series employee designated by the Director of Corrections or designated by the Director of Corrections and employed by the State Department of Mental Health to work in the California Medical Facility or employee of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency or employee of the Department of the Youth Authority designated by the Director of the Youth Authority or any superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, or any transportation officer of a probation department.

(c) The following persons may carry a firearm while not on duty: a parole officer of the Department of Corrections or the Department of the Youth Authority, a correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections. A parole officer of the Youthful Offender Parole Board may carry a firearm while not on duty only when so authorized by the chairperson of the board and only under the terms and conditions specified by the chairperson. Nothing in this section shall be interpreted to require licensure pursuant to Section 12025. The director or chairperson may deny or revoke for good cause a person's right to carry a firearm under this subdivision. That person shall, upon request, receive a hearing, as provided for in the negotiated grievance procedure between the exclusive employee representative and the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board, to review the director's or the chairperson's decision.

(d) Persons permitted to carry firearms pursuant to this section, either on or off duty, shall meet the training requirements of Section 832 and shall qualify with the firearm at least quarterly. It is the responsibility of the individual officer to maintain his or her eligibility to carry firearms off-duty.

SEC. 34. Section 830.6 of the Penal Code is amended to read:

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, a reserve police officer of a regional park district or of a transit district, or a deputy of the Department of Fish and Game, and is assigned specific police functions by that authority, the person is a peace officer; provided, the person qualifies as set forth in Section 832.6, and provided further, that the authority of the person as a peace officer shall extend only for the duration of the person's specific assignment. A transit district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, or a reserve police officer of a regional park district or of a transit district, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer; provided the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6, and provided further, that the authority of the person shall include the full powers and duties of a peace officer as provided by Section 830.1, or in the case of a transit district reserve police officer, the powers and duties which are authorized in Section 830.33.

(b) Whenever any person is summoned to the aid of any uniformed peace officer, the summoned person shall be vested with the powers of a peace officer as are expressly delegated to him or her by the summoning officer or as are otherwise reasonably necessary to properly assist the officer.

SEC. 34.1. Section 830.6 of the Penal Code is amended to read:

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, a reserve police officer of a regional park district or of a transit district, or a deputy of the Department of Fish and Game, or a special agent of the Department of Justice, and is assigned specific police functions by that authority, the person is a peace officer; provided, the person qualifies as set forth in Section 832.6, and provided further, that the authority of the person as a peace officer shall extend only for the duration of the person's specific assignment. A transit district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a deputy sheriff, or a reserve police officer of a regional park district or of a transit district, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by

resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer; provided the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6, and provided further, that the authority of the person shall include the full powers and duties of a peace officer as provided by Section 830.1, or in the case of a transit district reserve police officer, the powers and duties which are authorized in Section 830.33.

(b) Whenever any person is summoned to the aid of any uniformed peace officer, the summoned person shall be vested with the powers of a peace officer as are expressly delegated to him or her by the summoning officer or as are otherwise reasonably necessary to properly assist the officer.

SEC. 35. 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, as 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. 35.1. 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, as 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. These employees may exercise the power to serve warrants as specified in Sections 1523 and 1530 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.

SEC. 36. Section 830.8 of the Penal Code is amended to read:

830.8. (a) Federal criminal investigators are not California peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws provided that these investigators are engaged in the enforcement of federal criminal laws and exercise the arrest powers only incidental to the performance of their federal duties. The investigators, prior to the exercise of these arrest powers, shall have been certified by their agency heads as having satisfied the training requirements of Section 832.

(b) Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.

SEC. 37. Section 830.9 of the Penal Code is amended to read:

830.9. Animal control officers are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if those officers receive a course in the exercise of those powers pursuant to Section 832 That part of the training course specified in Section 832 pertaining to the carrying and use of firearms shall not

be required for any animal control officer whose employing agency prohibits the use of firearms.

For the purposes of this section, "firearms" includes capture guns, blowguns, carbon dioxide operated rifles and pistols, air guns, handguns, rifles, and shotguns.

SEC 38. Section 830.10 of the Penal Code is amended to read:

830.10. Any uniformed peace officer shall wear a badge, nameplate, or other device which bears clearly on its face the identification number or name of the officer.

SEC 39. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following words have the following meanings:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Domestic violence" is abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (c) of Section 830.2, and a member of a California State University Police Department, as defined in subdivision (d) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition seized by any state or local law enforcement agency and not returned within 72 hours, the court shall allow reasonable attorney's fees, not to exceed one thousand dollars ($1,000), to the prevailing party.

(c) Any firearm which has been taken into custody which has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm and proof of ownership.

(d) Any firearm taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028.

SEC. 39.1. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following words have the following meanings:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Domestic violence" is abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (c) of Section 830.2, a member of a California State University Police Department, as defined in subdivision (d) of Section 830.2, and a peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours. If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition seized by any state or local law enforcement agency and

not returned within 72 hours, the court shall allow reasonable attorney's fees, not to exceed one thousand dollars ($1,000), to the prevailing party.

(c) Any firearm which has been taken into custody which has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm and proof of ownership.

(d) Any firearm taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, or by a peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028.

SEC. 40. Section 13526 is added to the Penal Code, to read:

13526. In no event shall any allocation be made from the Peace Officers' Training Fund to a local government agency if the agency was not entitled to receive funding under any of the provisions of this article, as they read on December 31, 1989.

SEC. 41. Article 4 (commencing with Section 13540) is added to Chapter 1 of Title 4 of Part 4 of the Penal Code, to read:

Article 4. Peace Officers

13540. Any person or persons desiring peace officer status under Chapter 4.5 (commencing with Section 830) of Title 3 of Part 4 who, on January 1, 1990, were not entitled to be designated as peace officers under Chapter 4.5 shall request the Commission on Peace Officer Standards and Training to undertake a feasibility study regarding designating that person or persons as peace officers. The request and study shall be undertaken in accordance with regulations adopted by the commission. The commission may charge any person requesting a study, a fee, not to exceed the actual cost of undertaking the study. Nothing in this article shall apply to or otherwise affect the authority of the Director of Corrections, the Director of the Youth Authority, or Secretary of Youth and Adult Correctional Agency to designate peace officers as provided for in Section 830.5.

13541. Any study undertaken under this article shall include, but shall not be limited to, the current and proposed duties and responsibilities of persons employed in the category seeking the designation change, their field law enforcement duties and responsibilities, their supervisory and management structure, and their proposed training methods and funding sources.

13542. In order for the commission to give a favorable recommendation as to a change in designation to peace officer status, the person or persons desiring the designation change shall be employed by an agency with a supervisory structure consisting of a chief law enforcement officer, the agency shall agree to comply with

the training requirements set forth in Section 832, and shall be subject to the funding restriction set forth in Section 13526. The commission shall issue the study and its recommendations to the requesting agency within 18 months of the request if the request is made in accordance with the regulations of the commission. A copy of that study and recommendations shall also be submitted to the Legislature.

SEC. 42. Section 10334 of the Public Contract Code is amended to read:

10334. (a) No state employee shall purchase any goods, supplies, equipment, or materials from the state, unless the goods, supplies, equipment, or materials are offered to the general public in the regular course of the state's business on the same terms and conditions as those applicable to the employee. "State employee," as used in this section, means any employee of the state included within Section 82009 of the Government Code, and all officers and employees included within Section 4 of Article VII of the California Constitution, except those persons excluded from the definition of "designated employee" under the last paragraph of Section 82019 of the Government Code.

(b) Notwithstanding subdivision (a), any peace officer described in subdivision (a), (b), (f), (g), or (h) of Section 830.2 of the Penal Code, employed by the State of California for a period of more than 120 months who has been duly retired through a service retirement or a peace officer retiring from a job-incurred disability not related to a mental or emotional disorder and who has been granted the legal right to carry a concealed firearm pursuant to subdivision (a) of Section 12027 of the Penal Code may be authorized by the person's department head to purchase his or her state-issued handgun. Disability retired peace officers need not meet the 120 month employment requirement. The cost of the handgun shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the handgun issued as determined by the appointing power, plus a charge for the cost of handling. The retiring officer shall request to purchase his or her handgun in writing to the department within 30 calendar days of his or her retirement date.

SEC. 43. Section 4156 of the Public Resources Code is amended to read:

4156. (a) The director and employees or classes of employees of the department designated by the director have the powers conferred by law upon peace officers listed in Section 830.2 of the Penal Code, and voluntary firewardens designated by the director have the powers conferred by law upon peace officers listed in Section 830.37 of the Penal Code; provided, however, that the primary duty of the peace officer shall be the enforcement of forest laws and regulations, state and county fire laws and regulations, and the laws relating to explosives as set forth in Part 1 (commencing with Section 12000) of Division 11 of the Health and Safety Code,

other than laws the enforcement of which is primarily the responsibility of the State Fire Marshal. Officers, employees, and voluntary firewardens, upon request pursuant to Section 8597 of the Government Code, shall have the full powers and duties of peace officers for all purposes as provided by the Penal Code and are not liable to civil action for trespass committed in the discharge of their duties.

(b) Any peace officer may enforce federal fire laws to the extent that he or she is authorized to do so.

SEC. 44. Section 8226 of the Public Utilities Code is amended to read:

8226. The Governor of the state may, upon the application of any railroad or steamboat company, appoint and commission during his or her pleasure one or more persons designated by such company, to serve at the expense of the company, as police officers, who shall have the powers and authority of peace officers listed in Section 830.33 of the Penal Code and who, after being duly sworn, may act as police officers upon the premises, cars, or boats of the company. The company designating such persons shall be responsible civilly for any abuse of their authority.

SEC. 45. Section 12820 of the Public Utilities Code is amended to read:

12820. (a) A district may employ a suitable security force. The employees of the district that are designated by the general manager as security officers shall have the authority and powers conferred by subdivision (a) of Section 830.34 of the Penal Code upon peace officers. The district shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training pursuant to Title 4 (commencing with Section 13500) of Part 4 of the Penal Code.

(b) Every security officer employed by a district shall conform to the standards for peace officers of the Commission on Peace Officer Standards and Training. Any officer who fails to conform to these standards shall not continue to have the powers of a security officer.

SEC. 46. Section 22558 of the Public Utilities Code is amended to read:

22558. In addition to all other powers authorized by this part, the Santa Maria Airport District may employ airport police officers in accordance with subdivision (d) of Section 830.33 of the Penal Code.

SEC. 47. Section 30504 of the Public Utilities Code is amended to read:

30504. The district is authorized to maintain a suitable security force comprised of transit police officers and security guards. Persons designated as transit police officers are peace officers pursuant to Section 830.33 of the Penal Code. The district shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training pursuant to Title 4 (commencing with Section 13500) of Part 4 of the Penal Code in the recruitment and training of its transit police

officers. Every transit police officer employed by the district shall conform to the standards for peace officers of the Commission on Peace Officer Standards and Training and the commanding officer of the unit shall, not later than July 1, 1979, (1) have at least 10 years of active law enforcement experience in a capacity of employment requiring peace officer status and (2) have met the requirements for the advanced certificate of the Commission on Peace Officer Standards and Training, (3) have attended a POST-approved law enforcement management course, and (4) have an associate of arts degree or higher. Any such officer who fails to conform to such standards by July 1, 1979, shall not continue to have the powers of a peace officer.

SEC. 48. Section 25258 of the Vehicle Code, as amended by Chapter 245 of the Statutes of 1989, is amended to read:

25258. (a) An authorized emergency vehicle operating under the conditions specified in Section 21055 may display a flashing white light from a gaseous discharge lamp designed and used for the purpose of controlling official traffic control signals.

(b) An authorized emergency vehicle used by a peace officer, as defined in Section 830.1, subdivision (a), (b), (c), (d), (f), (g), (h), or (i) of Section 830.2, subdivision (b) of Section 830.31, subdivision (a) or (b) of Section 830.32, subdivision (a), (b), (c), or (d) of Section 830.33, and subdivision (a) of Section 830.4 of the Penal Code, in the performance of the peace officer's duties, may, in addition, display a steady or flashing blue warning light visible from the front, sides, or rear of the vehicle.

SEC. 49. Section 4313 of the Welfare and Institutions Code is amended to read:

4313. The hospital administrator of each state hospital may designate, in writing, as a police officer, one or more of the bona fide employees of the hospital. The hospital administrator and each such police officer have the powers and authority conferred by law upon peace officers listed in Section 830.38 of the Penal Code. Such police officers shall receive no compensation as such and the additional duties arising therefrom shall become a part of the duties of their regular positions. When and as directed by the hospital administrator, such police officers shall enforce the rules and regulations of the hospital, preserve peace and order on the premises thereof, and protect and preserve the property of the state.

SEC. 50. Section 4493 of the Welfare and Institutions Code is amended to read:

4493. The hospital administrator of each state hospital may designate, in writing, as a police officer, one or more of the bona fide employees of the hospital. The hospital administrator and each such police officer have the powers and authority conferred by law upon peace officers listed in Section 830.38 of the Penal Code Such police officers shall receive no compensation as such and the additional duties arising therefrom shall become a part of the duties of their regular positions. When and as directed by the hospital

administrator. such police officers shall enforce the rules and regulations of the hospital, preserve peace and order on the premises thereof, and protect and preserve the property of the state.

SEC. 51. Section 16 of this act amends the Briggs Death Penalty Initiative Act and shall become effective only when submitted to and approved by the voters, pursuant to subdivision (c) of Section 10 of Article II of the California Constitution.

SEC. 52. Section 1.1 of this bill incorporates amendments to Section 25755 of the Business and Professions Code proposed by both this bill and SB 1351. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 25755 of the Business and Professions Code, and (3) this bill is enacted after SB 1351, in which case Section 1 of this bill shall not become operative.

SEC. 53. Section 20.1 of this bill incorporates amendments to Section 830.1 of the Penal Code proposed by both this bill and AB 1688. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 830.1 of the Penal Code, and (3) this bill is enacted after AB 1688, in which case Section 20 of this bill shall not become operative.

SEC. 54. Section 21.1 of this bill incorporates amendments to Section 830.2 of the Penal Code proposed by both this bill and SB 1351 It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 830.2 of the Penal Code, and (3) this bill is enacted after SB 1351, in which case Section 21 of this bill shall not become operative.

SEC. 55 (a) Section 22.1 of this bill incorporates amendments to Section 830.3 of the Penal Code proposed by both this bill and SB 352. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 830.3 of the Penal Code, and (3) SB 1351 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 352, in which case Sections 22, 22.2, and 22.3 of this bill shall not become operative.

(b) Section 22.2 of this bill incorporates amendments to Section 830 3 of the Penal Code proposed by both this bill and SB 1351. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 830.3 of the Penal Code, (3) SB 352 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1351 in which case Sections 22, 22.1, and 22.3 of this bill shall not become operative.

(c) Section 22.3 of this bill incorporates amendments to Section 830.3 of the Penal Code proposed by this bill, SB 352, and SB 1351. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 830.3 of the Penal Code, (3) this bill is enacted after SB 352 and SB 1351, in which case Sections 22, 22.1, and 22.2 of this bill shall not become operative.

SEC. 56. Section 34.1 of this bill incorporates amendments to

Section 830.6 of the Penal Code proposed by both this bill and SB 1578. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 8830.6 of the Penal Code, and (3) this bill is enacted after SB 1578, in which case Section 34 of this bill shall not become operative.

SEC. 57. Section 35.1 of this bill incorporates amendments to Section 830.7 of the Penal Code proposed by both this bill and AB 1506. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 830.7 of the Penal Code, and (3) this bill is enacted after AB 1506, in which case Section 35 of this bill shall not become operative.

SEC. 58. Section 39.1 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after AB 2089, in which case Section 39 of this bill shall not become operative.

SEC. 59. Section 25.5 of this bill shall only become operative if Senate Bill No. 1578 is enacted.

CHAPTER 1166

An act to amend Section 25755 of the Business and Professions Code, and to amend Sections 830.2 and 830.3 of the Penal Code, relating to peace officers.

[Approved by Governor September 29, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 25755 of the Business and Professions Code is amended to read:

25755. (a) The director and the persons employed by the department for the administration and enforcement of this division are peace officers in the enforcement of the penal provisions of this division, the rules of the department adopted under the provisions of this division, and any other penal provisions of law of this state prohibiting or regulating the sale, exposing for sale, use, possession, giving away, adulteration, dilution, misbranding, or mislabeling of alcoholic beverages or intoxicating liquors, and these persons are authorized, while acting as peace officers, to enforce any penal provisions of law while in the course of their employment.

(b) The director, the persons employed by the department for the administration and enforcement of this division, and peace officers listed in Section 830.1 of the Penal Code may, in enforcing the provisions of this division, visit and inspect the premises of any licensee at any time during which the licensee is exercising the

privileges authorized by his or her license on the premises.

(c) Members of the California State Police and peace officers of the Department of Parks and Recreation, as defined in subdivisions (b) and (h) of Section 830.2 of the Penal Code may, in enforcing the provisions of this division, visit and inspect the premises of any licensee located on state property at any time during which the licensee is exercising the privileges authorized by his or her license on the premises.

(d) Any agents assigned to the Drug Enforcement Narcotics Team by the director shall have successfully completed a four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training. In addition, all other agents of the department shall successfully complete the four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training by June 1, 1993.

SEC. 2. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the California Highway Patrol, provided that the primary duty of the peace officer shall be the enforcement of the provisions of the Vehicle Code or of any other law relating to the use or operation of vehicles upon the highways, as that duty is set forth in the Vehicle Code.

(b) Any member of the California State Police Division, provided that the primary duty of the peace officer shall be to provide police services for the protection of state officers, and the protection of state properties and occupants thereof, as set forth in the Government Code.

(c) Members of the California National Guard have the powers of peace officers when they are (1) called or ordered into active state service by the Governor pursuant to the provisions of Section 143 or 146 of the Military and Veterans Code, (2) serving within the area wherein military assistance is required, and (3) directly assisting civil authorities in any of the situations specified in Section 143 or 146. The authority of the peace officer extends to the area wherein military assistance is required as to a public offense committed or which there is reasonable cause to believe has been committed within that area. The requirements of Section 1031 of the Government Code are not applicable under those circumstances.

(d) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(e) A member of the California State University and College Police Departments appointed pursuant to Section 89560 of the Education Code, provided that the primary duty of the peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(f) Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided that the primary duty of the peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of those persons, and the coordination of those activities with other criminal justice agencies.

(g) Members of the Wildlife Protection Branch of the Department of Fish and Game, provided that the primary duty of those deputies shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code

(h) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

(i) The Director of Forestry and employees or classes of employees of the Department of Forestry designated by the director pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of the peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(j) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control, provided that the primary duty of any of these peace officers shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

SEC. 3. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens as are designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that

code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 216 of that code.

(g) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) Marshals and police appointed by the Board of Directors of the California Exposition and State Fair, pursuant to Section 3332 of the Food and Agricultural Code, provided that the primary duty of the peace officer shall be the enforcement of the law as prescribed in that section

(j) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators as designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 556 of the Insurance Code.

(k) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(*l*) Investigators of the office of the Controller, provided that the

primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(n) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(o) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(p) Investigators of the Office of the Secretary of State, designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of the Government Code and Section 12172.5 of that code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(q) The Deputy Director for Security, as designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(r) Investigators employed by the Investigation Division of the Employment Development Department, designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

CHAPTER 1167

An act to amend Sections 245, 489, 12022, 12022.2, 12022.3, 12022.4, and 12022.5 of the Penal Code, and to amend Section 10334 of the Public Contract Code, relating to firearms.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 245 of the Penal Code, as amended by Chapter 18 of the Statutes of 1989, is amended to read:

245. (a) (1) Every person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars ($10,000), or by both such fine and imprisonment.

(2) Every person who commits an assault upon the person of another with a firearm is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for a term of not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars ($10,000) and imprisonment.

(3) Every person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Every person who commits an assault upon the person of another with a semiautomatic rifle shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(d) (1) Every person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Every person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic rifle and who knows

or reasonably should know that the victim is a peace officer or firefighter, who is engaged in the performance of his or her duties, when such peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Every person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and disposed of in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.1. Section 489 of the Penal Code is amended to read:

489. Grand theft is punishable as follows:

(a) When the grand theft involves the theft of a firearm, by imprisonment in the state prison for 16 months, 2, or 3 years.

(b) In all other cases, by imprisonment in a county jail not exceeding one year or in the state prison.

SEC. 1.2. Section 12022 of the Penal Code, as amended by Chapter 19 of the Statute of 1989, is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of the felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years, unless such arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not that person is personally armed with a firearm. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reason for its enhancement choice on the record at the time of the sentence.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276, or a machinegun, as defined in Section 12200, the additional term described in this subdivision shall be three years whether or not the arming is an element of the offense of which he or she was convicted. The additional term provided in this paragraph

shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with an assault weapon or machinegun whether or not the person is personally armed with an assault weapon or machinegun.

(b) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of the felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three, four, or five years, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reason for its enhancement choice on the record at the time of the sentence.

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (c), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentencing.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and

enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 2. Section 12022.2 of the Penal Code is amended to read:

12022.2. Any person who, while armed with a firearm in the commission or attempted commission of any felony, has in his or her immediate possession ammunition for the firearm designed primarily to penetrate metal or armor, shall upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony, be punished by an additional term of three, four, or five years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

SEC. 3. Section 12022.3 of the Penal Code is amended to read:

12022.3. For each violation of Section 261, 264.1, 286, 288, 288a, or 289, and in addition to the sentence provided, any person shall receive an enhancement (a) of three, four, or five years if the person uses a firearm or any other deadly weapon in the commission of the violation or (b) of one, two, or three years if the person is armed with a firearm or any other deadly weapon. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

SEC. 4. Section 12022.4 of the Penal Code is amended to read:

12022.4. Any person who, during the commission or attempted commission of a felony, furnishes or offers to furnish a firearm to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony shall, in addition and consecutive to the punishment prescribed by the felony or attempted felony of which the person has been convicted, be punished by an additional term of one, two, or three years in the state prison. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence. The additional term provided in this section shall not be imposed unless the fact of the furnishing is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

SEC. 5. Section 12022.5 of the Penal Code, as amended by Chapter 19 of the Statutes of 1989, is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years, unless use of a firearm is an element of the offense of which he or she was convicted. The court shall order imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state its

reasons for its enhancement choice on the record at the time of sentencing.

(b) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to the person of another, or any person who personally uses an assault weapon, as specified in Section 12276 or a machinegun, as defined in Section 12200, in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245.

(e) When a person is found to have personally used a firearm, an assault weapon, or a machinegun in the commission or attempted commission of a felony as provided in this section and the firearm, assault weapon, or machinegun is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(g) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancement provided in subdivision (c) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 6. Section 10334 of the Public Contract Code is amended to read:

10334. (a) No state employee shall purchase any goods, supplies, equipment, or materials from the state, unless the goods, supplies, equipment, or materials are offered to the general public in the

regular course of the state's business on the same terms and conditions as those applicable to the employee. "State employee," as used in this section, means any employee of the state included within Section 82009 of the Government Code, and all officers and employees included within Section 4 of Article VII of the California Constitution, except those persons excluded from the definition of "designated employee" under the last paragraph of Section 82019 of the Government Code.

(b) Notwithstanding subdivision (a), any peace officer described in subdivision (a), (b), (g), (h), or (i) of Section 830.2 of the Penal Code, employed by the State of California for a period of more than 120 months who has been duly retired through a service retirement or a peace officer retiring from a job-incurred disability not related to a mental or emotional disorder and who has been granted the legal right to carry a concealed firearm pursuant to subdivision (a) of Section 12027 of the Penal Code may be authorized by the person's department head to purchase his or her state-issued handgun. Disability retired peace officers need not meet the 120 month employment requirement. The cost of the handgun shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the handgun issued as determined by the appointing power, plus a charge for the cost of handling. The retiring officer shall request to purchase his or her handgun in writing to the department within 30 calendar days of his or her retirement date.

(c) Notwithstanding subdivision (a), any peace officer described in subdivision (a) of Section 830.2 of the Penal Code may purchase his or her state-issued service revolver if the Commissioner of the California Highway Patrol directs the Department of the California Highway Patrol to change its state-issued service weapon system. The cost of the service revolver shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the revolver issued as determined by the commissioner, plus a charge for the cost of handling. The requesting officer shall request to purchase his or her revolver in writing to the department within 10 calendar days of receiving the new state-issued weapon.

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

CHAPTER 1168

An act to add Part 6.5 (commencing with Section 12700) to Division 2 of the Insurance Code, relating to insurance, and making an appropriation therefor.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Part 6.5 (commencing with Section 12700) is added to Division 2 of the Insurance Code, to read:

PART 6.5. CALIFORNIA MAJOR MEDICAL INSURANCE PROGRAM

CHAPTER 1. GENERAL

12700. The Legislature finds and declares all of the following:

(a) That many Californians, who do not have employer-sponsored group health coverage and are unable to secure adequate health coverage for themselves and their dependents because of preexisting medical conditions.

(b) That, even where uninsured persons with preexisting conditions are able to secure coverage, the cost of coverage is prohibitively high or is secured only by waiving coverage for the preexisting conditions for which they are most likely to need care.

(c) That adverse selection precludes private health plans regulated by the State of California from enrolling medically uninsurable persons in the face of the escalating health care costs, and a highly competitive market.

(d) That, left to face the cost of major medical care without health coverage, all but the extremely affluent uninsured persons must ultimately look to publicly funded programs including Medi-Cal or MISP in the event of severe illness or injury.

(e) That a prudent means of making major medical coverage available to persons presently unable to purchase it, is to subsidize their purchase of private health coverage from participating health plans.

CHAPTER 2. DEFINITIONS

12705. For the purposes of this part, the following terms have the following meanings:

(a) "Applicant" means an individual who applies for major medical coverage through the program.

(b) "Board" means the Major Medical Insurance Board.

(c) "Fund" means the Major Medical Insurance Fund, from

which the program may authorize expenditures to pay for medically necessary services which exceed subscribers' contributions, and for administration of the program.

(d) "Major medical coverage" means the payment for medically necessary services provided by institutional and professional providers.

(e) "Participating health plan" means a private insurer (1) holding a valid outstanding certificate of authority from the Insurance Commissioner, a nonprofit hospital service plan qualifying under Chapter 11A (commencing with Section 11491) of Part 2 of Division 2, a nonprofit membership corporation lawfully operating under the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of the Corporations Code), or a health care service plan as defined under subdivision (f) of Section 1345 of the Health and Safety Code, which is lawfully engaged in providing, arranging, paying for, or reimbursing the cost of personal health care services under insurance policies or contracts, medical and hospital service agreements, or membership contracts, in consideration of premiums or other periodic charges payable to it, and (2) which contracts with the program to administer major medical coverage to program subscribers.

(f) "Plan rates" means the total monthly amount charged by a participating health plan for a category of risk.

(g) "Program" means the California Major Medical Insurance Program.

(h) "Subscriber" means an individual who is eligible for and receives major medical coverage through the program.

(i) "Subscriber contribution" means the portion of participating health plan rates paid by the subscriber.

CHAPTER 3. POWERS AND DUTIES

12710. The California Major Medical Insurance Program is hereby created in the Business, Transportation and Housing Agency. The program shall be managed by the Major Medical Insurance Board. The board shall consist of five members appointed as follows:

The Governor shall appoint three members, subject to confirmation by the Senate, and shall designate one of these appointees as chair of the board. The Senate Committee on Rules shall appoint one member. The Speaker of the Assembly shall appoint one member. The terms of appointment shall be four years.

12711. The board shall have the authority:

(a) To determine the eligibility of applicants.

(b) To determine the major medical coverage to be provided program subscribers.

(c) To research and assess the needs of persons not adequately covered by existing private and public health care delivery systems and promote means of assuring the availability of adequate health care services.

(d) To approve and establish subscriber contributions, plan rates, and program contribution amounts.

(e) To provide major medical coverage for subscribers or to contract with a participating health plan or plans to provide or administer major medical coverage for subscribers.

(f) To authorize expenditures from the fund to pay program expenses which exceed subscriber contributions.

(g) To contract for administration of the program or any portion thereof with any public agency, including any agency of state government, or with any private entity.

(h) To issue rules and regulations to carry out the purposes of this part.

(i) To exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it under this part.

12711.5. The board shall include a promotional component in the administrative costs of the program. This component shall include reasonable costs of advertising and other appropriate means of notifying the public of the program. Any state agency requested by the board shall provide assistance in implementing this promotional component of the program.

12712. The board shall, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), adopt all necessary rules and regulations to carry out this part, including the following:

(a) Establishing the scope and content of adequate major medical coverage.

(b) Determining reasonable minimum standards for participating health plans

(c) Determining the time, manner, method, and procedures for withdrawing program approval from a plan.

(d) Researching and assessing the needs of persons without adequate health coverage, and promoting means of assuring the availability of adequate health care services.

(e) Administering the program so as to ensure that the program subsidy amount does not exceed amounts transferred to the fund pursuant to Chapter 8 (commencing with Section 12739).

(f) Issuing appropriate rules and regulations for any other matters it may be authorized or required to provide for by this part. In adopting these rules and regulations, the board shall be guided by the needs and welfare of persons unable to secure adequate health coverage for themselves and their dependents, and prevailing practices among private health plans.

12713. Plan rates for major medical benefits approved for the program shall not be excessive, inadequate, or unfairly discriminatory, but shall be adequate to pay anticipated costs of claims or services and administration, when combined with program subsidies made available under Chapter 8 (commencing with Section 12739).

12714. There is in the program an appropriately qualified three-member physician advisory panel to be appointed by the board to provide consultation to the board on the utilization review, including peer review and quality assurance procedures of any participating health plan. This consultation shall be nonbinding. The term of office of each member of this panel shall be for three years.

CHAPTER 4. MAJOR MEDICAL INSURANCE

12715. If the board is unable to contract with participating health plans pursuant to Chapter 5 (commencing with Section 12720) the board shall issue or cause to be issued a policy of major medical coverage to subscribers. The policy may be offered directly by the program or by a participating health plan through a contract with the board. The contract may provide that the contracting health plan assumes full or partial risk for the cost of covered health services or that the contracting health plan undertakes only to provide administrative services. The subscriber contribution under this chapter shall not exceed 125 percent of the standard average individual rate for comparable coverage as determined by the board.

12716. The program may place a lien on compensation or benefits recovered or recoverable by a subscriber from any party or parties responsible for the compensation or benefits for which benefits have been provided under a policy issued under this chapter or Chapter 5 (commencing with Section 12720).

12717. Except as provided in Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, benefits received under this chapter or Chapter 5 (commencing with Section 12720) are in excess of and secondary to, any other form of health benefits coverage.

12718 Benefits under this chapter or Chapter 5 (commencing with Section 12720) shall be subject to a required subscriber copayment of 20 percent and an annual household deductible amount of five hundred dollars ($500). However, the aggregate amount of deductible and copayments payable annually under this section shall not exceed two thousand dollars ($2,000) for an individual and three thousand dollars ($3,000) for a family.

CHAPTER 5. PARTICIPATING HEALTH PLANS

12720 The program shall, without compliance with any provision of law relating to competitive bidding, enter into contracts with private organizations which qualify as participating health plans to provide major medical coverage to individuals and their dependents who apply for coverage through the program.

12721. The board may provide or purchase stop-loss coverage under which the program and participating health plans share the risk for health plan expenses which exceed plan rates.

12722. The board shall withdraw its approval of any participating

health benefits plan for noncompliance with program standards, nonpayment of claims, or other good cause shown. Approval shall not be withdrawn except after reasonable notice to the health plan, program subscribers enrolled in the plan, physicians or organizations of physicians offering services through the plan, and all interested parties.

12723. The participating health plans with which the program shall contract, if available, shall include:

(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 subscribers.

(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 or other providers of health services practicing as a group in a common center or centers. This group shall include physicians representing at least three major medical specialties 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 or other providers of health services 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) Cost containment and cost reduction incentive programs which involve the subscriber as an active participant, along with the health plan and providers, in a joint effort toward containing and reducing the cost of providing medical and hospital health care services.

CHAPTER 6. SUBSCRIBER ELIGIBILITY AND ENROLLMENT

12725. Each resident of the state meeting the eligibility criteria of this section and who is unable to secure adequate private health coverage is eligible to apply for major medical coverage through the program. To be eligible for enrollment in the program an applicant shall have been rejected for health care coverage by at least one private health plan. An applicant shall be deemed to have been rejected if the only private health coverage which the applicant could secure would (1) impose substantial waivers which the program determines would leave a subscriber without adequate coverage for medically necessary services, or (2) would afford such limited coverage, as the program determines would leave the subscriber without adequate coverage for medically necessary services, or (3) would afford coverage only at an excessive price,

which the board determines is significantly above standard average individual coverage rates.

12725.5. (a) It shall constitute unfair competition for purposes of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code for an insurer, an insurance agent or broker, or an administrator, as defined in Section 1759, to refer an individual employee to the program, or arrange for an individual employee to apply to the program, for the purpose of separating that employee from group health coverage provided in connection with the employee's employment.

(b) It shall constitute an unfair labor practice contrary to public policy for any employer to refer an individual employee to the program, or to arrange for an individual employee to apply to the program, for the purpose of separating that employee from group health coverage provided in connection with the employee's employment.

(c) As used in this section, "group health coverage" includes any nonprofit hospital service plan, health care service plan, self-insured employee welfare benefit plan, or disability insurance providing medical or hospital benefits.

12726. The program shall not provide coverage or benefits for charges or expenses incurred by a subscriber during the first six months of enrollment in the program for any condition which, during the six months immediately preceding enrollment in the program, had manifested itself in a manner as would cause an ordinarily prudent person to seek diagnosis, care, or treatment or for which medical advice, care, or treatment was recommended or received as to the condition during that period.

However, the exclusion from coverage of this section shall be waived to the extent to which the subscriber has previously satisfied the waiting period of any similar exclusion for that preexisting condition under the terms of any prior health insurance coverage that was involuntarily terminated, provided the subscriber has applied for enrollment in the program not later than 31 days following involuntary termination of the prior coverage. The exclusion from coverage of this section shall also be waived as to any condition of a subscriber previously receiving coverage under a plan of another state similar to the program established by this part, if the subscriber was eligible for benefits under that other-state coverage for the condition.

12727. Where more than one participating health plan is offered, the program shall make available to applicants eligible to enroll in the program sufficient information to make an informed choice among the various types of participating health plans. Each applicant shall be issued an appropriate document setting forth or summarizing the services to which an enrollee is entitled, procedures for obtaining major medical coverage, a list of contracting health plans and providers, and a summary of grievance procedures.

12728. After the applicant notifies the program in writing of his or her choice of participating health plan, the program shall assist the applicant in enrolling as a subscriber and securing major medical coverage for the subscriber and any dependents.

12729. A subscriber may request a change in coverage based upon a change in the family status of any dependent, by filing an application within 30 days after the occurrence of the change in family status, or at other times and under conditions as may be prescribed by program regulations.

12730. Health coverage secured through the program shall permit a covered dependent of a subscriber to elect to continue the same coverage upon the death of the subscriber.

12731. A transfer of enrollment from one participating health plan to another may be made by a subscriber at times and under conditions as may be prescribed by regulations of the program

12732. If a subscriber is dissatisfied with any action or failure to act which has occurred in connection with a participating plan's coverage, the subscriber shall have the right to appeal to the board and shall be accorded an opportunity for a fair hearing. Hearings shall be conducted, insofar as practicable, pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

12733. Subscribers and their dependents who become eligible for Part A and Part B of Medicare shall not be enrolled, or continue to be enrolled, in major medical coverage afforded by this part.

CHAPTER 7. PLAN RATES AND COMPENSATION FROM THE FUND

12735. Upon enrollment as a subscriber in the program, the subscriber shall be responsible for payment of the subscriber contribution. Termination of coverage by a participating health plan for nonpayment of the subscriber contribution shall be governed by the same laws and regulations by which the participating health plan is regulated as to all its subscribers and enrollees.

12736. Each participating plan shall submit annually to the program, rates which it estimates are sufficient to cover the cost of providing major medical coverage to its subscribers. The rates shall be submitted on the basis of categories of risk which shall be established by the program in a manner consistent with industry practice.

12737. The program shall establish program contribution amounts for each category of risk. The program contribution amounts shall be established at levels which, when subtracted from the average rate charged by participating health plans will result in subscriber contributions of 125 percent of the standard average individual rates for comparable coverage. The program shall pay contribution amounts to participating health plans from the Major Medical Insurance Fund.

12738. A participating health plan may charge subscriber

contributions under this chapter which do not exceed the difference between its plan rate for the category of risk and the program contribution amount for the category of risk.

CHAPTER 8. MAJOR MEDICAL INSURANCE FUND

12739. There is hereby created in the State Treasury a special fund known as the Major Medical Insurance Fund which is, notwithstanding Section 13340 of the Government Code, continuously appropriated to the board for the purposes specified in Section 12739.1. No policies shall be issued under this program until thirty million dollars ($30,000,000) has been deposited in the Major Medical Insurance Fund. The thirty million dollars ($30,000,000) shall come first from the interest accrued on the unspent balances in the Unallocated Account, the Health Services Account, and the Physician Services Account in the Cigarette and Tobacco Products Surtax Fund. If the accrued interest is less than thirty million dollars ($30,000,000), the balance shall be appropriated from unspent 1988–89 and 1990–91 moneys in the three accounts

After June 30, 1991, thirty million dollars ($30,000,000) shall be deposited annually in the Major Medical Insurance Fund from the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund.

12739.1. Except as provided in Section 12739.2, the board shall authorize the expenditure of money in the fund to cover program expenses, including program expenses which exceed subscriber contributions.

12739.2. The Legislature shall appropriate moneys from the fund each fiscal year for the administrative operation of the program. However, the state shall not be liable beyond the assets of the fund for any obligations incurred, or liabilities sustained, in the operation of the California Major Medical Insurance Program.

12739.3. Any moneys remaining in the fund at the end of any fiscal year may be carried forward to the next succeeding fiscal year

12739.4. The board shall establish a reserve which is sufficient to prudently operate the program.

SEC. 2. The sum of two hundred fifty thousand dollars ($250,000) is hereby transferred from the Unallocated Account of the Cigarette and Tobacco Products Surtax Fund to the Major Medical Insurance Fund and is appropriated to the Catastrophie Health Insurance Board for initial operating expenses incurred in carrying out the provisions of this act.

CHAPTER 1169

An act to amend Sections 3063.5 and 11167.5 of the Penal Code, relating to crimes.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 3063.5 of the Penal Code is amended to read:

3063.5. In parole revocation proceedings, a parolee or his or her attorney shall receive a copy of any police, arrest, and crime reports, and child abuse reports made pursuant to Sections 11166 and 11166.2 pertaining to such proceedings. Portions of those reports containing confidential information need not be disclosed if the parolee or his or her attorney has been notified that confidential information has not been disclosed. Portions of child abuse reports made pursuant to Sections 11166 and 11166.2 containing identifying information relating to the reporter shall not be disclosed. However, the parolee or his or her attorney shall be notified that information relating to the identity of the reporter has not been disclosed.

SEC. 2. Section 11167.5 of the Penal Code, as amended by Chapter 153 of the Statutes of 1989, is amended to read:

11167.5. (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article shall be a misdemeanor punishable by up to six months in jail or by a fine of five hundred dollars ($500) or by both.

(b) Reports of suspected child abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.

(3) Persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.

(4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.

(5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.

(6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an

out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse. The disclosure authorized by this section includes disclosure among hospital scan teams located in the same county.

(8) Coroners and medical examiners when conducting a postmortem examination of a child.

(9) The Board of Prison Terms may subpoena reports that (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.

(c) Nothing in this section shall be interpreted to require the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(d) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1170

An act to add Sections 11349.10 and 11349.11 to the Government Code, relating to administrative regulations.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 11349.10 is added to the Government Code, to read:

11349.10. (a) If the office is notified of, or on its own becomes aware of, an existing regulation in the California Code of Regulations for which the statutory authority has been repealed or becomes ineffective or inoperative by its own terms, the office shall order the adopting agency to show cause why the regulation should not be repealed for lack of statutory authority and shall notify the Legislature in writing of this order. In issuing the order, the office shall specify in writing the reasons for issuance of the order. "Agency," for purposes of this section and Section 11349.11, refers to the agency that adopted the regulation and, if applicable, the agency that is responsible for administering the regulation in issue.

(b) The agency may, within 30 days after receipt of the written notification, submit in writing to the office any citations, legal arguments, or other information opposing the repeal, including public comments during this period. This section shall not apply where the agency demonstrates in its response that any of the following conditions exists:

(1) The statute or section thereof is simultaneously repealed and substantially reenacted through a single piece of legislation, or where subsequent legislation evinces a specific legislative intent to reenact the substance of the statute or section. When a regulation cites more than one specific statute or section as reference or authority for the adoption of a regulation, and one or more of the statutes or sections are repealed or become ineffective or inoperative, then the only provisions of the regulation which remain in effect shall be those for which the remaining statutes or sections provide specific or general authority.

(2) The statute is temporarily repealed, or rendered ineffective or inoperative by a provision of law which is effective only for a limited period, in which case any regulation described in subdivision (a) is thereby also temporarily repealed, rendered ineffective, or inoperative during that limited period. Any regulation so affected shall have the same force and effect upon the expiration of the limited period during which the provision of law was effective as if that temporary provision had not been enacted.

(3) The statute or section of a statute being repealed, or becoming ineffective or inoperative by its own terms, is to remain in full force

and effect as regards events occurring prior to the date of repeal or ineffectiveness, in which case any regulation adopted to implement or interpret that statute shall likewise be deemed to remain in full force and effect in regards to those same events.

(c) This section shall not be construed to deprive any person or public agency of any substantial right which would have existed prior to, or hereafter exists subsequent to, the effective date of this section.

(d) Thirty days after receipt of the agency's opposition material, or the close of the 30-day agency and public response period if no response is submitted, the office shall do one of the following:

(1) Inform the agency and the Legislature in writing that the office has withdrawn its order to show cause.

(2) Issue a written notice to the agency specifying the reasons for the repeal and its intent to file a Notice of Repeal of the invalid regulation with the Secretary of State. Within seven calendar days of the filing of the Notice of Repeal, the office shall provide the agency, the Governor, and the Legislature with a written decision detailing the reasons for the repeal and a copy of the Notice of Repeal, and publish the office's written decision in the California Regulatory Notice Register.

(e) The office shall order the removal of the repealed regulation from the California Code of Regulations within 30 days after filing the Notice of Repeal, if the agency has not appealed the office's decision, or upon receipt of notification of the Governor's decision upholding the office's decision, if an appeal has been filed pursuant to Section 11349.11.

SEC. 2. Section 11349.11 is added to the Government Code, to read:

11349.11. (a) To initiate a review of the office's Notice of Repeal pursuant to Section 11349.10, the agency shall appeal the office's decision by filing a written Request for Review with the Governor's Legal Affairs Secretary within 10 days of receipt of the Notice of Repeal and written decision provided for by paragraph (2) of subdivision (d) of Section 11349.10. The Request for Review shall include a complete statement as to why the agency believes the decision is incorrect and should be overruled. Along with the Request for Review, the agency shall submit all of the following:

(1) The offices' written opinion detailing the reasons for repeal required by paragraph (2) of subdivision (d) of Section 11349.10.

(2) Copies of all statements and other documents which were submitted to the office.

(b) A copy of the agency's Request for Review shall be delivered to the office on the same day it is delivered to the Governor's office. The office shall file its written response to the agency's request with the Governor's Legal Affairs Secretary within 10 days, and deliver a copy of its response to the agency on the same day it is delivered to the Governor's office.

(c) The Governor's office shall provide the requesting agency and the office with a written decision within 15 days of receipt of the

response by the office to the agency's Request for Review. Upon receipt of the decision, the office shall publish in the California Regulatory Notice Register the agency's Request for Review, the office's response thereto, and the decision of the Governor's office.

(d) The time requirements set by subdivisions (a) and (b) may be shortened by the Governor's office for good cause.

(e) In the event the Governor overrules the decision of the office, the office shall immediately transmit the regulation to the Secretary of State for filing.

(f) Upon overruling the decision of the office, the Governor shall transmit to the Rules Committees of both houses of the Legislature a statement of the reasons for overruling the decision of the office.

CHAPTER 1171

An act to amend Section 3212.1 of the Labor Code, relating to workers' compensation.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. This act shall be known and may be cited as the Police Officer's Cancer Protection Act.

SEC. 2. Section 3212.1 of the Labor Code is amended to read:

3212.1. In the case of active firefighting members of fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, and active firefighting members of the fire departments of the University of California and the California State University, whether these members are volunteers, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether volunteers, partly paid, or fully paid, and peace officers as defined in Section 830.1 and subdivision (a) of Section 830.2 of the Penal Code who are primarily engaged in active law enforcement activities, the term "injury" as used in this division includes cancer which develops or manifests itself during a period while the member is in the service of the department or unit, if the member demonstrates that he or she was exposed, while in the service of the department or unit, to a known carcinogen as defined by the International Agency for Research on Cancer, or as defined by the director, and that the carcinogen is reasonably linked to the disabling cancer.

The compensation which is awarded for cancer shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1172

An act to add Section 13023 to the Penal Code, relating to criminal records.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 13023 is added to the Penal Code, to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, such information as may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 2 Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1173

An act to add Section 56111.1 to the Government Code, and to amend Section 99231 of the Public Utilities Code, relating to local government.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 56111.1 is added to the Government Code, to read:

56111.1. (a) Notwithstanding Section 56110, upon approval of the commission, the City of Soledad may annex noncontiguous territory of not more than 1,000 acres in area, located in the County of Monterey and which constitutes a state correctional training facility. If, after the completion of the annexation, the State of California sells that territory or any part thereof, all of that territory which is no longer owned by the state shall cease to be a part of the City of Soledad

(b) If territory is annexed pursuant to this section, the city may not annex any territory not owned by the State of California and not contiguous to the city although that territory is contiguous to the territory annexed pursuant to this section.

(c) When territory ceases to be part of the city pursuant to this section, the legislative body of the city shall adopt a resolution confirming the detachment of that territory from the city. The resolution shall describe the detached territory and shall be accompanied by a map indicating the territory. Immediately upon adoption of the resolution, the city clerk shall make any filing provided for by Chapter 8 (commencing with Section 57200) of Part 4 of Division 3.

(d) If territory annexed to the City of Soledad pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) The City of Soledad may enter into an agreement with any

other city under which the city apportions any increase in state subventions resulting from the annexation of territory pursuant to this section.

SEC. 2. Section 99231 of the Public Utilities Code is amended to read:

99231. All operators and city or county governments with responsibility for providing municipal services to a given area collectively may file claims for only those moneys that represent that area's apportionment.

The term "apportionment" has reference to that proportion of the total annual revenue anticipated to be received in the fund that the population of the area bears to the total population of the county.

The term "area" means:

(a) With reference to a transit district, the entire area stated in its enabling legislation or franchise, excluding cities therein which have retained the right to join the district at a later time.

(b) With reference to a transit development board, the entire area stated in its enabling legislation, including the municipalities therein which operated bus systems prior to the creation of the board and subsequently conveyed such systems to the board.

(c) With reference to a county government, the unincorporated area of the county.

(d) With reference to a city government, the corporate area of the city

(e) With reference to the City and County of San Francisco and the Counties of Alameda and Contra Costa, the unincorporated area thereof (and with reference to a city in those counties, the corporate area of the city) which is outside the area of the Alameda-Contra Costa Transit District and which is not receiving adequate local public transportation services, as determined by the Metropolitan Transportation Commission pursuant to subdivision (b) of Section 99207.

(f) Where a transit district, a transit development board, or a county or city, provides public transportation services beyond its boundaries, its area, for purposes of this section, shall also include:

(1) All of that area within one-half mile of any route which extends beyond its boundaries.

(2) All of the corporate area of a city to which it provides such services pursuant to contract or prior express authority of the secretary.

The transportation planning agency may rely, in its determination of populations, on estimates which are used by the Controller for distributing money to cities under Section 2107 of the Streets and Highways Code and to counties under Section 11005 of the Revenue and Taxation Code, and may contract with the Department of Finance or other appropriate state agency for an annual determination of such population estimates as may be necessary.

(g) With reference to the County of Riverside, the area within the jurisdiction of the transit operator established by the joint exercise

of powers of one or more cities and the County of Riverside. The area within the jurisdiction of the transit operator shall be as it existed on January 1, 1981, as determined by the Riverside County Transportation Commission.

(h) With reference to the County of San Bernardino, the area within the jurisdiction of the transit operator established by the joint exercise of powers of one or more cities, including the most populous city, and the County of San Bernardino. The area within the jurisdiction of the transit operator shall be as it existed on January 1, 1985, as determined by the San Bernardino County Transportation Commission.

(i) With reference to the County of Monterey, the area including the Correctional Training Facility-Soledad even if annexed by the City of Soledad.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City of Soledad.

CHAPTER 1174

An act to amend Sections 7068 and 7071.6 of, and to add Section 7028.14 to, the Business and Professions Code, and to amend and supplement the Budget Act of 1989 by amending Item 1230-020-735 of Section 2.00 thereof, relating to contractors.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 7028.14 is added to the Business and Professions Code, to read:

7028.14. Notwithstanding any other provision of the law, the registrar may waive part of the civil penalty if the person against whom the civil penalty is assessed satisfactorily completes all the requirements for, and is issued, a contractor's license. Any outstanding injury to the public shall be satisfactorily settled prior to issuance of the license.

SEC. 2. Section 7068 of the Business and Professions Code is amended to read.

7068. (a) The board shall require an applicant to show such degree of knowledge and experience in the classification applied for, and such general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public.

(b) An applicant shall qualify in regard to his or her experience

and knowledge in one of the following ways:

(1) If an individual, he or she shall qualify by personal appearance or by the appearance of his or her responsible managing employee who is qualified for the same license classification as the classification being applied for.

(2) If a copartnership or a limited partnership, it shall qualify by the appearance of a general partner or by the appearance of a responsible managing employee who is qualified for the same license classification as the classification being applied for.

(3) If a corporation, or any other combination or organization, it shall qualify by the appearance of a responsible managing officer or responsible managing employee who is qualified for the same license classification as the classification being applied for.

(c) An applicant who has been convicted of a violation of Section 7028 may not apply for a license for a one-year period from the date of conviction. Upon submittal of an application the applicant shall be subject to Section 7071.6.

(d) A responsible managing employee for the purpose of this chapter shall mean an individual who is a bona fide employee of the applicant and is actively engaged in the classification of work for which that responsible managing employee is the qualifying person in behalf of the applicant.

(e) The board shall, in addition, require an applicant who qualifies by means of a responsible managing employee under either paragraph (1) or (2) of subdivision (b) to show his or her general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business as the board deems necessary for the safety and protection of the public.

(f) Except in accordance with Section 7068.1, no person qualifying on behalf of an individual or firm under paragraph (1), (2), or (3) of subdivision (b) shall hold any other active contractor's license while acting in the capacity of a qualifying individual pursuant to this section.

(g) At the time of application for renewal of a license, the responsible managing individual shall file a statement with the registrar, on a form prescribed by the registrar, verifying his or her capacity as a responsible managing individual to the licensee.

(h) Statements made by or on behalf of an applicant as to the applicant's experience in the classification applied for shall be verified by a qualified and responsible person In addition, the registrar shall, as specified by board regulation, randomly review a percentage of such statements for their veracity.

(i) Any licensee who has qualified for a license prior to January 1, 1980, by means of a responsible managing employee or officer, shall be permitted to continue as a licensee until January 1, 1982, during which time that licensee shall convert his or her qualifying status to conform with the requirements of this section as amended at the 1979–80 Regular Session of the Legislature.

(j) The registrar shall review experience gained by applicants

from other states to determine whether all of that experience was gained in a lawful manner in that state.

SEC. 3. Section 7071.6 of the Business and Professions Code is amended to read:

7071.6. (a) Except as provided in Section 7071.8 and subdivision (b), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that the applicant file or have on file a contractor's bond in the sum of five thousand dollars ($5,000). No bond shall be required of a holder of an inactive license during the period the license is inactive.

(b) Notwithstanding subdivision (a), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license for the license classification of swimming pool contractor, that the applicant file or have on file a contractor's bond in the sum of ten thousand dollars ($10,000). No bond shall be required of a holder of an inactive license during the period the license is inactive.

(c) Notwithstanding any other provision of the law to the contrary, the board shall require, as a condition to the continued maintenance of any active license, that the holder of a license file, or have on file, on and after January 1, 1980, a contractor's bond in the sum of five thousand dollars ($5,000); provided, that the holder of a license for the classification of swimming pool contractor file, or have on file, a contractor's bond in the sum of ten thousand dollars ($10,000).

(d) Notwithstanding any other provision of the law to the contrary, the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, or employee based on a recorded and unsatisfied judgment from a court of law or on an unsatisfied final arbitration award in the five years preceding the application, file or have on file a contractor's bond or other security sufficient to guarantee payment of an amount equal to the unsatisfied judgment or judgments, to a maximum of fifty thousand dollars ($50,000). The applicant shall provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied judgment or final arbitration award, to satisfy a debt. This section applies only with respect to an unsatisfied judgment or arbitration award which is substantially related to the qualifications, functions, or duties of the license being applied for. If the applicant shows proof of satisfaction of the judgment, this requirement does not apply. This section shall not apply to an applicant for issuance, reinstatement, reactivation, or renewal where an unsatisfied judgment has been discharged in a bankruptcy proceeding. The bond shall be on file for a minimum of one year or until such time as a satisfaction of all debts is made. Proof of the satisfaction of a debt shall be provided to the registrar. Failure to provide the bond or a copy of any accord, as required by this subdivision, shall be grounds

to deny the issuance, reinstatement, reactivation, or renewal of a license.

The board shall include on the license application for issuance, reinstatement, reactivation, or renewal, a statement, to be made under penalty of perjury, as to whether there are any such recorded and unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, or the applicant's employees.

(e) Falsification of any application for the issuance, reinstatement, reactivation, or renewal of a license is a cause for disciplinary action.

(f) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) of Section 7071.6 until such time as the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

SEC. 4. Item 1230-020-735 of Section 2.00 of the Budget Act of 1989 is amended to read:

1230-020-735—For support of Contractors' State License Board, payable from the Contractors' License Fund 28,388,000

Schedule:

(a) 30-Contractors' State License Board 28,441,000

(b) Reimbursements ..... -53,000

Provisions:

1. No funds appropriated by this item may be encumbered for any services of the Attorney General which are in excess of the amounts budgeted therefor sooner than 30 days after written notification by the Department of Finance to the Chairperson of the Joint Legislative Budget Committee.
2. In expending funds appropriated pursuant to this item, the board shall give first priority to completing complaint mediation and investigation of all consumer complaints and complaints from industry sources. The board shall give second priority to investigation of applications at the level of 3 percent of all applications received by the board. The board shall also investigate

applications using unlicensed experience or self-employment to meet the experience criteria at the level of 5 percent of these applications received by the board.

No other complaints and investigations shall be processed if either of the following exists:

(a) Consumer complaints are not mediated or investigated within a median time of 90 days of receipt by the board.

(b) Application investigations are not completed within a median time of 90 days of receipt by the board.

3. The board shall report quarterly to the Joint Legislative Budget Committee and the relevant policy and fiscal committees of the Legislature all of the following:

(a) The number of consumer complaints and application investigations.

(b) The median time expended by the board in closing consumer complaints and application investigations.

(c) The number of application and complaint investigations that exceed 90 days.

(d) If other complaints have been mediated or investigated during the quarter and consumer complaints or application investigations are not being completed within a median time of 90 days, the board shall report the type and number of those cases, as well as the reasons for their priority treatment.

(e) The status of filling all authorized enforcement positions

4. For purposes of Provisions 2, 3, and 5:

(a) "Consumer complaint" means a complaint which is directly received from the public.

(b) "Completed mediation" means a complaint that is closed, or referred to formal investigation, by a consumer services representative.

(c) "Completed investigation" means a complaint that has been investigated by a deputy registrar and is closed or awaiting formal disciplinary action.

5. During the course of mediation and investigation of consumer complaints, the board shall send a copy to the complainant of any notification sent to the defendant.

7. Of the amount appropriated in this item, at least $528,000 shall be dedicated to establishing a special investigation unit for the purpose of combating the unlicensed contractor problem in the state.

CHAPTER 1175

An act to amend Section 1507.5 of the Health and Safety Code, relating to health services.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Legislature finds and declares that the cost of maintaining physically disabled people in hospitals and nursing homes continues to increase annually. Prolonged institutionalization can be detrimental to psychological and social growth, especially that of infants and children. There is a national trend to home-based health care as an alternative to prolonged institutional care. Therefore, it is the intent of the Legislature that physically disabled Californians of all ages who receive health care through the California Medical Assistance Program (Medi-Cal) and who otherwise would require institutional care, be offered alternative home- and community-based care services subject to the terms and conditions of federally approved home- and community-based care waivers as authorized by Title XIX of the Social Security Act (42 U.S.C.A. Sec. 1396, et seq.).

SEC. 2. Section 1507.5 of the Health and Safety Code is amended to read:

1507.5. (a) In-home medical care and home and community-based services, as described in subdivisions (t) and (u) of Section 14132 of the Welfare and Institutions Code, may, when deemed medically appropriate by the State Department of Health Services, be provided by a licensed home health agency to children with special medical needs, as defined by the State Department of

Health Services, in foster family homes. For children described in this section, these medical services shall not be considered as a substantial component of the services provided by the licensee for the purposes of Section 1507. To be eligible under this section for placement in a foster home, a child shall be receiving medical supervision and medical case management by an agent designated by the State Department of Health Services.

(b) No more than two children eligible for services under this section may be placed in a single licensed foster family home at one time.

(c) The State Department of Social Services and its agents shall not evaluate or have any responsibility or liability for the evaluation of the medical services described in this section.

SEC. 3. The State Department of Health Services shall report to the Legislature on or before July 1, 1990, on all of the following:

(a) A description and the status of all waivers applied for or amended which serve HIV- and drug-exposed foster children, including those concerning level of care eligibility criteria.

(b) The estimated number and geographic distribution of Medi-Cal-eligible HIV- and drug-exposed children and the number and geographic distribution of those eligible for waiver services, in the foster care system and residing with their natural parents or relatives.

(c) A description of how Medi-Cal coverage can be obtained for services similar to those included in the waivers, such as case management, for those HIV- and drug-exposed children found ineligible for the waiver services based on the level of care criteria but who require ongoing health and support services in order to successfully remain at home or in foster family homes.

(d) A description of the Medicaid waiver enacted in the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) for HIV-and drug-exposed children, the differences, if any, between this waiver and the other waivers which the department is amending, and, if the state determines there is no need to apply for this waiver, an explanation as to why it is not needed.

(e) A description as to how the department, in consultation with the State Department of Alcohol and Drug Programs, the State Department of Social Services, the State Department of Developmental Services, county welfare departments, county drug programs, and county health programs, disseminates information regarding the availability of waiver services and the service application process.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000),

reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1176

An act to amend Section 1858.2 of the Insurance Code, relating to insurance.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 1858.2 of the Insurance Code is amended to read:

1858.2. (a) If the insurer, organization, group, or association does not make those changes as may be necessary to correct the noncompliance specified in the notice issued under Section 1858.1, or if the insurer, organization, group, or association has failed to establish to the satisfaction of the commissioner that the noncompliance does not exist, the commissioner shall hold a public hearing by mailing a notice to that insurer, organization, group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(b) In the event that the insurer and complainant resolve the matter and the insurer has consented to a rating modification, then that modification shall apply to other policyholders underwritten by the insurer for that class of insurance.

(c) If the insurer, organization, group, or association has refused to enter into informal conciliation at the request of the commissioner, the commissioner may hold a public hearing, whether or not the complaint was accompanied by a request for a public hearing, by mailing a notice to the insurer, organization, group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(d) If a hearing noticed under subdivisions (a) and (c) is based upon a complaint made pursuant to Section 1858, the commissioner shall also mail notice to the complainant not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(e) If upon sufficient complaint as provided in Section 1858 and upon review and investigation of the complaint, the commissioner has good cause to believe that the insurer, organization, group, or association, or any rate, rating plan, or rating system made or used by that insurer or rating organization, does not comply with the

requirements and standards of this chapter applicable to it, the commissioner shall hold a public hearing by mailing a notice to the complainant and to the insurer, organization, group, or association not less than 30 days prior to the date set for hearing specifying the matters to be considered at the hearing.

(f) Within 60 days of submission of a matter for decision following a public hearing thereon pursuant to this section, the commissioner shall issue his or her decision or order.

(g) With respect to public hearings under this section, the commissioner may at his or her discretion, grant preference to a hearing in which the complainant has reached the age of 70 years.

CHAPTER 1177

An act to amend, add, and repeal Section 7071.6 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 7071.6 of the Business and Professions Code is amended to read:

7071.6. (a) Except as provided in Section 7071.8 and subdivision (b), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that the applicant file or have on file a contractor's bond in the sum of five thousand dollars ($5,000). No bond shall be required of a holder of an inactive license during the period the license is inactive.

(b) Notwithstanding subdivision (a), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license for the license classification of swimming pool contractor, that the applicant file or have on file a contractor's bond in the sum of ten thousand dollars ($10,000). No bond shall be required of a holder of an inactive license during the period the license is inactive.

(c) Notwithstanding any other provision of the law, the board shall require, as a condition to the continued maintenance of any active license, that the holder of a license file, or have on file, on and after January 1, 1980, a contractor's bond in the sum of five thousand dollars ($5,000); provided, that the holder of a license for the classification of swimming pool contractor file, or have on file, a contractor's bond in the sum of ten thousand dollars ($10,000).

(d) Notwithstanding any other provision of law, the board shall require, as a condition precedent to the issuance, reinstatement, or reactivation of a license, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer,

materials supplier, or employee based on an entered and unsatisfied final judgment from a court of law, file or have on file with the board a judgment bond or other security sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the judgment bond is filed with the board. The judgment bond is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after that the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any judgment creditor holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. Failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension, by operation of law, of any license to which this section applies. After a license is suspended for failure to maintain the bond or abide by the accord the license can only be reinstated when proof of a satisfaction of all debts is made.

Except as otherwise provided, the judgment bond shall remain in full force in the amount posted until the entire debt is satisfied. If at the time of renewal, the licensee submits proof of partial satisfaction of the outstanding final judgment, the board may authorize the judgment bond be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the judgment bond requirement may be removed.

The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any entered and unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, or the applicant's employees. Notwithstanding any other provision of law if it is found that the applicant falsified the statement then the license will be retroactively suspended to date of issuance and the license will stay suspended until the judgment bond is filed.

This subdivision applies only with respect to an unsatisfied judgment which is substantially related to the qualifications, functions, or duties of the license being applied for. This section shall not apply to an applicant for issuance, reinstatement, or reactivation where an unsatisfied judgment has been fully discharged in a completed bankruptcy proceeding.

(e) Notwithstanding any other provision of law, the licensee shall notify the registrar in writing of any entered and unsatisfied judgments within 90 days from the date of judgment.

If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended retroactively to 90 days from the date of judgment. The suspension shall not be removed

until proof of satisfaction of judgment is submitted to the registrar.

This section applies only with respect to an unsatisfied judgment which is substantially related to the qualifications, functions, or duties of the license being applied for. In lieu of submitting proof of satisfaction of judgment in order to remove this suspension a licensee may submit proof that the unsatisfied judgment has been fully discharged in a completed bankruptcy proceeding.

If the licensee notifies the registrar in writing within 90 days of the date of judgment of any entered and unsatisfied judgments the board shall require as a condition to the continual maintenance of the license that the licensee file or have on file with the board a judgment bond or other security sufficient to guarantee payment of an amount equal to the unsatisfied judgment or judgments. The licensee has 90 days from date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. The licensee may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied judgment, to satisfy a debt in lieu of filing the bond. Failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension, by operation of law, to any license that this section applies. If a licensee does not file the bond within 90 days from the board's date of notification and the license is suspended or if the bond is not maintained and the license is suspended or if the licensee does not abide by the accord and the license is suspended the license suspension can only be removed and the license reinstated when proof of a satisfaction of all debts is made.

Except as otherwise provided, the judgment bond shall remain in full force in the amount posted until the entire debt is satisfied. If at the time of renewal, the licensee submits proof of partial satisfaction of the outstanding final judgment, the board may authorize the judgment bond be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the judgment bond requirement may be removed.

(f) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(g) For the purposes of this section, the term "judgment" includes any final arbitration award.

(h) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until such time as the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation

issued pursuant to Section 7028.7, constituted a substantial injury to the public.

This section shall be operative until January 1, 1992, and on that date is repealed.

SEC. 1.5. Section 7071.6 of the Business and Professions Code is amended to read:

7071.6. (a) Except as provided in Section 7071.8 and subdivision (b), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that the applicant file or have on file a contractor's bond in the sum of five thousand dollars ($5,000). No bond shall be required of a holder of an inactive license during the period the license is inactive.

(b) Notwithstanding any other provision of law, the board shall require, as a condition precedent to the issuance, reinstatement, or reactivation of a license, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an entered and unsatisfied final judgment from a court of law, file or have on file with the board a judgment bond or other security sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the judgment bond is filed with the board. The judgment bond is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after that the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any judgment creditor holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. Failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension, by operation of law, of any license to which this section applies. After a license is suspended for failure to maintain the bond or abide by the accord the license can only be reinstated when proof of a satisfaction of all debts is made.

Except as otherwise provided, the judgment bond shall remain in full force in the amount posted until the entire debt is satisfied. If at the time of renewal, the licensee submits proof of partial satisfaction of the outstanding final judgment, the board may authorize the judgment bond be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the judgment bond requirement may be removed.

The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any entered and unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, or the applicant's employees.

Notwithstanding any other provision of law if it is found that the applicant falsified the statement then the license will be retroactively suspended to date of issuance and the license will stay suspended until the judgment bond is filed.

This subdivision applies only with respect to an unsatisfied judgment which is substantially related to the qualifications, functions, or duties of the license being applied for. This section shall not apply to an applicant for issuance, reinstatement, or reactivation where an unsatisfied judgment has been fully discharged in a completed bankruptcy proceeding.

(c) Notwithstanding any other provision of law, the licensee shall notify the registrar in writing of any entered and unsatisfied judgments within 90 days from the date of judgment.

If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended retroactively to 90 days from the date of judgment. The suspension shall not be removed until proof of satisfaction of judgment is submitted to the registrar.

This section applies only with respect to an unsatisfied judgment which is substantially related to the qualifications, functions, or duties of the license being applied for. In lieu of submitting proof of satisfaction of judgment in order to remove this suspension a licensee may submit proof that the unsatisfied judgment has been fully discharged in a completed bankruptcy proceeding.

If the licensee notifies the registrar in writing within 90 days of the date of judgment of any entered and unsatisfied judgments the board shall require as a condition to the continual maintenance of the license that the licensee file or have on file with the board a judgment bond or other security sufficient to guarantee payment of an amount equal to the unsatisfied judgment or judgments. The licensee has 90 days from date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. The licensee may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied judgment, to satisfy a debt in lieu of filing the bond. Failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension, by operation of law, to any license that this section applies. If a licensee does not file the bond within 90 days from the board's date of notification and the license is suspended or if the bond is not maintained and the license is suspended or if the licensee does not abide by the accord and the license is suspended the license suspension can only be removed and the license reinstated when proof of a satisfaction of all debts is made.

Except as otherwise provided, the judgment bond shall remain in full force in the amount posted until the entire debt is satisfied. If at the time of renewal, the licensee submits proof of partial satisfaction of the outstanding final judgment, the board may authorize the judgment bond be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the judgment bond requirement may be

removed.

(d) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(e) For the purposes of this section, the term "judgment" includes any final arbitration award.

(f) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until such time as the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

This section shall be operative until January 1, 1992, and on that date is repealed.

SEC. 2. Section 7071.6 is added to the Business and Professions Code, to read:

7071.6. (a) Except as provided in Section 7071.8 and subdivision (b), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that the applicant file or have on file a contractor's bond in the sum of five thousand dollars ($5,000). No bond shall be required of a holder of an inactive license during the period the license is inactive.

(b) Notwithstanding subdivision (a), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license for the license classification of swimming pool contractor, that the applicant file or have on file a contractor's bond in the sum of ten thousand dollars ($10,000). No bond shall be required of a holder of an inactive license during the period the license is inactive.

(c) Notwithstanding any other provision of the law to the contrary, the board shall require, as a condition to the continued maintenance of any active license, that the holder of a license file, or have on file, on and after January 1, 1980, a contractor's bond in the sum of five thousand dollars ($5,000); provided, that the holder of a license for the classification of swimming pool contractor file, or have on file, a contractor's bond in the sum of ten thousand dollars ($10,000).

(d) Notwithstanding any other provision of the law to the contrary, the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, or employee based on a recorded and unsatisfied judgment from a court of law or on an

unsatisfied final arbitration award in the five years preceding the application, file or have on file a contractor's bond or other security sufficient to guarantee payment of an amount equal to the unsatisfied judgment or judgments, to a maximum of fifty thousand dollars ($50,000). The applicant shall provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied judgment or final arbitration award, to satisfy a debt. This section applies only with respect to an unsatisfied judgment or arbitration award which is substantially related to the qualifications, functions, or duties of the license being applied for. If the applicant shows proof of satisfaction of the judgment, this requirement does not apply. This section shall not apply to an applicant for issuance, reinstatement, reactivation, or renewal where an unsatisfied judgment has been discharged in a bankruptcy proceeding. The bond shall be on file for a minimum of one year or until such time as a satisfaction of all debts is made. Proof of the satisfaction of a debt shall be provided to the registrar. Failure to provide the bond or a copy of any accord, as required by this subdivision, shall be grounds to deny the issuance, reinstatement, reactivation, or renewal of a license.

The board shall include on the license application for issuance, reinstatement, reactivation, or renewal, a statement, to be made under penalty of perjury, as to whether there are any such recorded and unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, or the applicant's employees.

(e) Falsification of any application for the issuance, reinstatement, reactivation, or renewal of a license is a cause for disciplinary action.

(f) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until such time as the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

This section shall become operative on January 1, 1992.

SEC. 3. Section 7071.6 is added to the Business and Professions Code, to read:

7071.6. (a) Except as provided in Section 7071.8 and subdivision (b), the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that the applicant file or have on file a contractor's bond in the sum of five thousand dollars ($5,000). No bond shall be required of a holder of

an inactive license during the period the license is inactive.

(b) Notwithstanding any other provision of the law to the contrary, the board shall require, as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a license, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, or employee based on a recorded and unsatisfied judgment from a court of law or on an unsatisfied final arbitration award in the five years preceding the application, file or have on file a contractor's bond or other security sufficient to guarantee payment of an amount equal to the unsatisfied judgment or judgments, to a maximum of fifty thousand dollars ($50,000). The applicant shall provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied judgment or final arbitration award, to satisfy a debt. This section applies only with respect to an unsatisfied judgment or arbitration award which is substantially related to the qualifications, functions, or duties of the license being applied for. If the applicant shows proof of satisfaction of the judgment, this requirement does not apply. This section shall not apply to an applicant for issuance, reinstatement, reactivation, or renewal where an unsatisfied judgment has been discharged in a bankruptcy proceeding. The bond shall be on file for a minimum of one year or until such time as a satisfaction of all debts is made. Proof of the satisfaction of a debt shall be provided to the registrar. Failure to provide the bond or a copy of any accord, as required by this subdivision, shall be grounds to deny the issuance, reinstatement, reactivation, or renewal of a license.

The board shall include on the license application for issuance, reinstatement, reactivation, or renewal, a statement, to be made under penalty of perjury, as to whether there are any such recorded and unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, or the applicant's employees.

(c) Falsification of any application for the issuance, reinstatement, reactivation, or renewal of a license is a cause for disciplinary action.

(d) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until such time as the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

This section shall become operative on January 1, 1992.

SEC. 4. Sections 1.5 and 3 of this bill shall become operative only

if SB 1565 and this bill are enacted and become effective on January 1, 1990, and this bill is enacted after SB 1565, in which case Sections 1 and 2 of this bill shall not become operative.

CHAPTER 1178

An act to add Section 11353.1 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 11353.1 is added to the Health and Safety Code, to read:

11353.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11353 with respect to 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, specified in subdivision (b), (c), or (g) of Section 11055, or any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, where the defendant is at least four years older than the minor, shall receive an additional punishment of one, two, or three years at the court's discretion.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for 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.

CHAPTER 1179

An act to add Section 1463.06 to the Penal Code, and to amend Section 13575 of, and to add Sections 13575.5, 13575.6, 13575.7, and 13576.5 to, the Public Utilities Code, relating to districts.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989]

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

SECTION 1. Section 1463.06 is added to the Penal Code, to read:

1463.06. Notwithstanding Sections 1462.5 and 1463, and any other provisions of law, there shall be transferred once a month, to the treasurer of any municipal utility district in the county for deposit in the district fund, an amount equal to 50 percent of all fines and forfeitures collected during the preceding month upon conviction of any person or upon the forfeiture of bail from any person notified by the district of a violation of Section 13576.5 of the Public Utilities Code, and an amount equal to the remaining 50 percent shall be transferred into the general fund of the county.

SEC. 1.5. Section 13575 of the Public Utilities Code is amended to read:

13575. (a) Any person who fails to comply with any order issued by the district, shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day in which the discharge, violation, or refusal occurs.

(b) Any person who intentionally or negligently violates any order issued by the district for violation of rules regulating or prohibiting discharge of waste water which causes or threatens to cause a condition of contamination, pollution or nuisance, as defined in this article, may be liable civilly in a sum not to exceed twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(c) The attorney of the district, upon request of the board, shall petition the superior court to impose, assess and recover the sums provided for in subdivisions (a) and (b). In determining the amount of the fine 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 corrective action, if any, attempted or taken by the discharger.

(d) Notwithstanding any other provision of law, all civil fines imposed by the court for a violation of this section shall be distributed as follows:

(1) Fifty percent shall be transferred into the general fund of the county in which the action to recover the fine was brought.

(2) Fifty percent shall be transferred once a month to the treasurer of any municipal utility district in the county for deposit in the funds of the district.

(e) Remedies under this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal, but no liability shall be recoverable under this section for any violation for which liability is recovered under Section 13575.5.

SEC. 2. Section 13575.5 is added to the Public Utilities Code, to read:

13575.5. (a) The district may issue a complaint to any person on whom civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail on the person subject to the district's discharge and reporting requirements, and shall inform the party served that a hearing shall be conducted within 60 days after the party has been served. The hearing shall be before a hearing officer designated by the board. The person who has been issued a complaint may waive the right to a hearing, in which case the district shall not conduct a hearing. A person dissatisfied with the decision of the hearing officer may appeal to the board of directors within 30 days of notice of the hearing officer's decision.

(c) If after the hearing, or appeal, if any, it is found that the person has violated reporting or discharge requirements, the hearing officer or board may assess a fine against that person. In determining the amount of the fine the hearing officer or 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 corrective action, if any, attempted or taken by the discharger.

(d) Civil liability may be imposed by the district as follows:

(1) In an amount which does not exceed one thousand dollars ($1,000) for each day for knowingly or willfully failing or refusing to furnish technical or monitoring reports.

(2) In an amount which does not exceed five thousand dollars ($5,000) for each day of intentionally or negligently discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, knowingly falsifying any information provided in any furnished technical or monitoring report.

(3) In an amount which does not exceed ten dollars ($10) per gallon for discharges in violation of any of the district's cease and desist or other orders, or prohibitions issued, reissued, or adopted by the district.

(e) All moneys collected under this section shall be deposited in a special district account and shall be made available for the monitoring, treatment, and control of discharges into district facilities.

(f) Unless appealed, orders setting administrative civil liability shall become effective and final upon issuance thereof, and 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.

(g) No liability shall be recoverable under this section for any violation for which liability is recovered under Section 13575.

SEC. 3. Section 13575.6 is added to the Public Utilities Code, to read:

13575.6. Any party aggrieved by a final order issued by the board under Section 13575.5, after granting review of a hearing officer order, 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. Any party aggrieved by a final order of a hearing officer issued under Section 13575.5 for which the board denies review may obtain review of the order of the hearing officer in the superior court by filing in the court a petition of writ of mandate within 30 days following the denial of review by the board.

If no aggrieved party petitions for writ of mandate within the time provided by this section, an order of the board or a hearing officer shall not be subject to review by any court or agency, except that the board may grant review on its own motion of an order issued under Section 13575.5 after the expiration of the time limits set by that section.

SEC. 4. Section 13575.7 is added to the Public Utilities Code, to read:

13575.7. (a) Within 30 days after service of a copy of a decision and order issued by the board pursuant to Section 13575.5, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof. Failure to file a petition shall not preclude a party from challenging the reasonableness and validity of a decision or order of a hearing officer or the board in any judicial proceedings brought to enforce that decision or order or for other civil remedies.

(b) The evidence before the court shall consist of the record before the board, including the hearing officer's record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this division. In every such case, the court shall exercise its independent judgment on the evidence.

(c) Except as otherwise provided in this section, subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section.

SEC. 5. Section 13576.5 is added to the Public Utilities Code, to read:

13576.5. Any person who knowingly makes any false statement or representation in any record, report, plan, or other document filed with the district, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by the district,

shall be punished by a fine of not more than twenty-five thousand dollars ($25,000) or by imprisonment in the county jail for not more than six months, 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1180

An act to add Section 311.11 to the Penal Code, relating to crimes.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. This act shall be known and may be cited as the "Polanco-Ferguson Anti-Child Pornography Act of 1989."

SEC. 2. Section 311.11 is added to the Penal Code, to read:

311.11. (a) Every person who knowingly possesses or controls any matter, the production of which involves the use of a person under the age of 14 years, knowing that the matter depicts a person under the age of 14 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) If a person has been previously convicted of a violation of this section, he or she is guilty of a felony and shall be punished by imprisonment of two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) For purposes of this section, matter as defined in subdivision (b) of Section 311, also includes developed or undeveloped film, negatives, photocopies, filmstrips, slides, and videotapes, the production of which involves the use of a child under the age of 14 years. This section shall not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor shall it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

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

CHAPTER 1181

An act to amend Sections 33530, 60041, 60200, 60204, and 60205 of, and to add and repeal Section 60200.1 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

I am deleting the $150,000 General Fund appropriation contained in Section 8 of Senate Bill No 594

This bill would modify the instructional materials adoption process for grades one through eight, requiring adoption of materials in each subject area every two years instead of every seven

I believe the duties imposed upon the Superintendent of Public Instruction by this legislation can be accomplished from within existing resources

With this deletion, I approve Senate Bill No 594

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. It is the intent of the Legislature to simplify, clarify, and improve the current instructional materials adoption system for kindergarten and grades 1 to 8, inclusive. It is further the intent of the Legislature that textbooks shall be adopted by the State Board of Education and furnished without cost for use in these grades, as required by Section 7.5 of Article IX of the California Constitution.

The Legislature hereby declares that the objectives of the instructional materials adoption systems shall be to make available the most up-to-date materials with respect to content and quality, to provide a diverse assortment of basic instructional materials, to provide a wide range of instructional materials which reflect the diversity of the pupils enrolled in the state school system, including, where appropriate, a diversity of pedagogical approaches to learning, and to increase the availability and quality of instructional materials in the public schools that are in concert with the subject area frameworks.

SEC. 2. Section 33530 of the Education Code is amended to read:

33530. There is in the state government the Curriculum

Development and Supplemental Materials Commission consisting of a Member of the Assembly appointed by the Speaker of the Assembly, a Member of the Senate appointed by the Senate Committee on Rules, one public member appointed by the Speaker of the Assembly, one public member appointed by the Senate Committee on Rules, one public member appointed by the Governor, and 13 public members appointed by the State Board of Education upon the recommendation of the Superintendent of Public Instruction or the members of the State Board of Education.

So far as is practical and consistent with the duties assigned to the commission by the State Board of Education, at least seven of the 13 public members appointed by the State Board of Education shall be persons, who because they have taught, written, or lectured on the subject matter fields specified in Section 33533, in the course of public or private employment, have become recognized authorities or experienced practitioners in such fields. The State Board of Education shall make its appointments so as to ensure that, at any one time, at least seven of the public members shall be current classroom teachers, or mentor teachers, or both assigned to teach kindergarten or any of grades 1 to 12, inclusive.

Notwithstanding the requirement that seven of the public members shall be current classroom teachers or mentor teachers, current members of the commission who were appointed on or before December 31, 1989, shall be allowed to complete their terms.

In making the remaining appointments to the commission, and in establishing the commission's advisory task forces or committees, the State Board of Education is encouraged to consider the role of other representatives of the educational community in the development of curriculum and instructional materials, including, but not limited to, administrators, governing school board members and parents who are reflective of the various ethnic groups and types of school districts in California.

SEC. 3. Section 60041 of the Education Code is amended to read:

60041. When adopting instructional materials for use in the schools, governing boards shall include only instructional materials which accurately portray, whenever appropriate:

(a) Humanity's place in ecological systems and the necessity for the protection of our environment.

(b) The effects on the human system of the use of tobacco, alcohol, narcotics and restricted dangerous drugs as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.

SEC. 4. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts.

(2) Mathematics.
(3) Reading.
(4) Science.
(5) Social Science.
(6) Bilingual or bicultural subjects.
(7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt any of the following for basic instructional materials in each subject in each grade:
(1) Instructional materials.
(2) Instructional materials systems.
(3) Instructional materials sets.
(4) A combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select.

(c) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:
(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.
(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(d) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board and its appropriate advisors and advisory groups shall use, and ensure that, in its judgment, all of the following conditions are met:
(1) The submitted basic instructional materials are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.
(2) The submitted basic instructional materials comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.
(3) The submitted instructional materials are factually accurate and incorporate principals of instruction reflective of current and confirmed research.
(4) The submitted instructional materials adequately cover the

subject area for the grade level or levels for which they are submitted.

(5) The submitted instructional materials meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(e) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (d). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisors to the state board.

(f) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (d) of Section 60200, or the materials fail to meet the state board's adopted curriculum framework. In the event that the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(g) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(h) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(i) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and media to meet the goals of the program and the needs of pupils.

(j) Upon making an adoption, the state board shall make available

to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period beginning with the date of the adoption of the item and ending on a date established by the state board as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based. All previous adoptions shall be integrated on lists and made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(k) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(*l*) A composite listing in the format of an order form may be used to meet the requirements of this section.

(m) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(n) Upon making an adoption, the state board shall establish the date upon which those adopted materials shall initially be available for use by schools.

SEC. 5. Section 60200.1 is added to the Education Code, to read:

60200.1. The implementation of the new submission cycle pursuant to Section 60200 may be phased in over a three-year period concluding January 1, 1993, if the state board ensures that submission opportunities for major subjects are available, during the transition period.

This section shall remain in effect only until January 1, 1993, and as of that date is repealed.

SEC. 6. Section 60204 of the Education Code is amended to read:

60204. The commission shall:

(a) Recommend curriculum frameworks to the state board.

(b) Develop criteria for evaluating instructional materials submitted for adoption so that the materials adopted shall adequately cover the subjects in the indicated grade or grades and which comply with the provisions of Article 3 (commencing with Section 60040) of Chapter 1. The criteria developed by the commission shall be consistent with the duties of the state board pursuant to Section 60200. The criteria shall be public information and shall be provided in written or printed form to any person requesting such

information.

(c) Study and evaluate instructional materials submitted for adoption.

(d) Recommend to the state board instructional materials which it approves for adoption.

(e) Review and have the authority to adopt the educational films or videotapes produced in accordance with Article 3 (commencing with Section 52740) of Chapter 11 of Part 28.

(f) Recommend to the state board policies and activities to assist the department and school districts in the use of the curriculum framework and other available model curriculum materials for the purpose of guiding and strengthening the quality of instruction in the public schools.

SEC. 7. Section 60205 of the Education Code is amended to read:

60205. The commission may, in order to fulfill its duties pursuant to Section 60204, appoint task forces or committees of subject matter experts to assist and advise them. Each task force or committee appointed by the commission shall include a majority consisting of current classroom teachers as defined in Section 33150 providing instruction in kindergarten and grades 1 to 8, inclusive, or mentor teachers, or certificated teachers employed by school districts or county offices of education who are not in a position that requires a services credential with a specialization in administrative services, or any combination of those teachers. The commission shall endeavor to appoint persons who are representatives of various ethnic groups and of various types of school districts. Accurate records of the advice and recommendations of each task force or committee member shall be maintained by the commission, and made available to the state board at its request. For the purpose of developing the curriculum framework or for other activities not associated with the evaluation of basic instructional materials, the commission may expand the authority for the appointment of classroom teachers to include teachers providing instruction in kindergarten and grades 1 to 12, inclusive.

SEC. 8. The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the period commencing January 1, 1990, and ending June 30, 1990, for the purpose of establishing six additional staff positions and for administrative costs incurred in the implementation of this act.

It is the intent of the Legislature that commencing with the 1990–91 fiscal year, and for each subsequent fiscal year, funds shall be made available to the State Department of Education through the annual Budget Act for the purpose of implementing the department's duties with respect to the instructional materials adoption system for kindergarten and grades 1 to 8, inclusive.

CHAPTER 1182

An act to add Chapter 28 (commencing with Section 7591) to Division 7 of Title 1 of the Government Code, and to add Section 5023 to the Vehicle Code, relating to Olympic training centers, and making an appropriation therefor.

[Approved by Governor September 30, 1989 Filed with Secretary of State September 30, 1989]

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

SECTION 1. The Legislature finds and declares the following:

(a) There are few achievements more prestigious than the winning of an Olympic Medal.

(b) The achievements of Olympic medalists and Olympic competitors add to the prestige and lustre of their communities and their home states.

(c) Major participation in the Olympic effort by a state serves a public purpose in enhancing a state's image as a progressive, forward-looking sovereign amenable to sound and bold visions of economic growth and improved opportunities for its citizens, thereby attracting quality industries and individuals to the state.

(d) It is the intent of the Legislature to enhance the national image and attractiveness of California, and to improve opportunities for all Californians, by providing funding pursuant to this act for a California Olympic Training Center.

SEC. 2 Chapter 28 (commencing with Section 7591) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 28. OLYMPIC TRAINING CENTER

7591. (a) The amount of fifteen million dollars ($15,000,000) is appropriated, subject to subdivision (b), from the General Fund to the Department of Commerce for a loan for allocation over three years in three equal amounts to that nonprofit organization currently named the San Diego National Sports Training Foundation, for purposes of developing and constructing, with the participation and advice of the United States Olympic Committee, a California Olympic Training Center.

(b) The loan allocations provided for by this section shall be made no earlier than December 31, of 1990, 1991, and 1992, and shall be made only if the San Diego National Sports Training Foundation is able and willing by each of those dates to provide the sum of five million dollars ($5,000,000), for purposes of developing and constructing, with the participation and advice of the United States Olympic Committee, a California Olympic Training Center.

(c) Loan allocations shall be repaid in full no later than 20 years from the date of receipt at a rate of interest equal to the average

Pooled Money Investment Account rate over the period during which any portion of an allocated amount remains outstanding.

7592. There is in the General Fund the California Olympic Training Account. The account shall consist of those revenues derived from the additional vehicle registration fees provided for in Section 5023 of the Vehicle Code and shall be used for the repayment of the loan authorized in Section 7591 for purposes of a California Olympic Training Center.

SEC. 3. Section 5023 is added to the Vehicle Code, to read:

5023. (a) Any person described in Section 5101 may also apply for a set of commemorative Olympic reflectorized license plates and the department shall issue those special license plates in lieu of regular license plates. The commemorative Olympic reflectorized license plates shall be of a distinctive design and shall be available in a special series of letters or numbers, or both, as determined by the department after consultation with the United States Olympic Committee.

(b) In addition to the regular fees for an original registration or renewal of registration, and a fee to recover the department's costs in issuing the plate, the following special fees shall be paid:

(1) One hundred dollars ($100) for the initial issuance of the special plates.

(2) Twelve dollars ($12) for the transfer of the special plates to another vehicle.

(3) Thirty dollars ($30) for duplicate, replacement commemorative Olympic reflectorized license plates of the same number in the series.

(c) When payment of renewal fees is not required as specified in Section 4000, or when the person determines to retain the plates upon sale, trade, or other release of the vehicle upon which the special plates have been displayed, the person shall notify the department and the person may retain the special plates.

(d) All revenue derived from the additional special fees provided in this section, less costs incurred by the department pursuant to this section, shall be deposited in the California Olympic Training Account in the General Fund established pursuant to Section 7592 of the Government Code.

CHAPTER 1183

An act to amend Sections 52060, 52061, 52062, 52063, 52065, and 62000.2 of, to amend the heading of, and to repeal Chapter 6.5 (commencing with Section 52060) of Part 28 of, and to add Section 52066 to, the Education Code, relating to education.

[Because law without Governor's signature Filed under Secretary of State September 30, 1989]

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

SECTION 1. The Legislature hereby declares its intent to reactivate the Native American Indian Education Program that became inoperative on June 30, 1987, pursuant to Section 62000.2 of the Education Code and that program, retitled as the American Indian Early Childhood Education Program, shall become operative on January 1, 1990.

SEC. 2. The heading of Chapter 6.5 (commencing with Section 52060) of Part 28 of the Education Code is amended to read:

CHAPTER 6.5. AMERICAN INDIAN EARLY CHILDHOOD EDUCATION PROGRAM

SEC. 3. Section 52060 of the Education Code is amended to read:

52060. It is the intent and purpose of the Legislature that the American Indian Early Childhood Education Program provided for by this chapter shall be directed to improve the educational accomplishments of American Indian pupils in the rural educational systems in California.

It is the intent of the Legislature to establish projects in American Indian education which are designed to develop and test educational models which increase competence in reading and mathematics. These instructional projects shall be provided in prekindergarten, kindergarten, and grades 1 to 4, inclusive.

The Legislature recognizes the importance of American Indian parent-community involvement in the planning, implementing, and evaluation of the American Indian early childhood education programs.

SEC. 4. Section 52061 of the Education Code is amended to read:

52061. As used in this chapter:

(a) "Board" means the State Board of Education.

(b) "Superintendent" means the Superintendent of Public Instruction.

(c) "Project" means an organized undertaking in American Indian early childhood education which includes, but is not limited to, a description of the undertaking, a listing of the goals and objectives to be achieved, a statement of methods to be used, and the methods to be used in evaluating the success of the project.

SEC. 5. Section 52062 of the Education Code is amended to read:

52062. From the funds appropriated therefor by the Legislature to the State Department of Education for the purposes of this chapter, the superintendent, with the approval of the board shall administer this chapter and make apportionments to school districts to meet the total approved expense of the school districts incurred in establishing American Indian early childhood education programs.

SEC. 6. Section 52063 of the Education Code is amended to read:

52063. The governing board of any rural school district receiving equalization aid, having a school in which there is a concentration of 10 percent or more of American Indian pupils, and which maintains prekindergarten to grade 4, inclusive, or kindergarten to grade 4, inclusive, may apply to the superintendent for a project in American Indian early childhood education.

The governing boards of two or more of such school districts may jointly apply for a project in American Indian early childhood education.

The application shall be made on forms provided by the superintendent, and in accordance with the rules and regulations adopted by the board.

The dates for making application shall be established by the superintendent.

SEC. 7. Section 52065 of the Education Code is amended to read:

52065. Each school district receiving funds provided by Section 52062 shall establish a districtwide American Indian advisory committee for American Indian early childhood education.

At each school participating, an American Indian parent advisory group shall be established to increase communication and understanding between members of a community and the school officials. Each committee shall provide advice and suggestions on all parts of the program.

SEC. 8. Section 52066 is added to the Education Code, to read:

52066. This chapter shall become inoperative on June 30, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which this chapter becomes inoperative and is repealed.

SEC. 9. Section 62000.2 of the Education Code is amended to read:

62000.2. The following programs shall sunset on June 30, 1987:

(a) Miller-Unruh Basic Reading Act of 1965.

(b) School improvement program.

(c) Economic impact aid.

(d) Bilingual education.

CHAPTER 1184

An act to add Section 22127.1 to the Education Code, relating to the State Teachers' Retirement System.

[Became law without Governor's signature Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 22127.1 is added to the Education Code, to read:

22127.1. (a) Notwithstanding the first paragraph of Section 22127, "final compensation" means the highest annual compensation earnable by a member who is a classroom teacher who retires after June 30, 1990, during any period of 12 consecutive months during his or her membership in the system. The last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) Section 22127, except the first paragraph thereof, shall apply to classroom teachers who retire after June 30, 1990, and any statutory reference to Section 22127 or "final compensation" with respect to a classroom teacher who retires after June 30, 1990, shall be deemed to be a reference to this section.

(c) As used in this section, "classroom teacher" means:

(1) All teachers and substitute teachers in positions requiring certification qualifications who spend, during the last 10 years of their service which immediately precedes their retirement, 60 percent or more of their time each year providing direct instruction.

(2) Other certificated personnel who spend, during the last 10 years of their service which immediately precedes their retirement, 60 percent or more of their time each year providing direct services to pupils, including, but not limited to, librarians, counselors, nurses, speech therapists, resource specialists, audiologists, audiometrists, hygienists, optometrists, psychologists, driver safety instructors, and personnel on special assignment to perform school attendance and adjustment services.

(d) As used in this section, "classroom teacher" does not include:

(1) Certificated employees whose job descriptions require an administrative credential.

(2) Certificated employees whose job descriptions include responsibility for supervision of certificated staff.

(3) Certificated employees who serve as advisers, coordinators, consultants, or developers or planners of curricula, instructional materials, or programs, who spend, during the last 10 years of their service which immediately precedes their retirement, less than 60 percent of their time in direct instruction.

(4) Certificated employees whose job descriptions require

provision of direct instruction or services, but who are temporarily functioning in nonteaching assignments.

(5) Classified employees.

(e) This section shall apply only to teachers employed by an employer which has, pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, entered into a written agreement with an exclusive representative, which makes this section applicable to its certificated employees.

(f) The written agreement shall include a mechanism to pay for all increases in benefits and allowances provided for by this section through employer contributions or employee contributions or both, which shall be collected and retained by the employer in a trust fund to be used solely and exclusively to pay the system for all increases in benefits and allowance provided by this section and related administrative costs. The employer shall annually reimburse the system from the trust fund an amount equal to: (1) the difference between what the member receives pursuant to this section and the amount the member would have received in the absence of this section, as determined by the board, and (2) the proportionate share of the cost to the system, as determined by the board, of administering this section. The reimbursement of the system shall include the cost of all increases in benefits and allowances provided for by this section for all years of service normally included in the calculation of the benefits and allowances.

(g) Upon the execution of the agreement, the employer shall notify all certificated employees of the agreement. Any certificated employee of the employer, who is in the Public Employees' Retirement System pursuant to Section 22608, may, within 90 days following the date of notification, elect to terminate his or her membership in the Public Employees' Retirement System and become a member of this system. An employer which elects to become subject to this section shall certify the eligibility of an employee, upon retirement or eligibility for a disability allowance, pursuant to the criteria set forth in this section.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1185

An act to add Article 19.5 (commencing with Section 8430) to Chapter 2 of Part 6 of the Education Code, relating to child care, and making an appropriation therefor.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

I am deleting the $60,000 appropriation contained in Section 2 of Assembly Bill No. 1169.

This bill would require the Department of Education to contract with a nonprofit agency to establish a model program to recruit and train in-home day providers for infants in Los Angeles, Orange, and Butte Counties.

The demands placed on budget resources require all of us to set priorities. With legislation I will be signing and the budget enacted in July 1989, more than $50 billion in state funds will be appropriated this fiscal year. 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.

It is more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1990–91. Only at that time can we review the relative merits of this program in comparison to all other funding projects. The budget process enables us to weigh all demands on the state's revenues and direct our resources to programs, either new or existing, that have the most merit.

With this deletion, I approve Assembly Bill No. 1169.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Article 19.5 (commencing with Section 8430) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 19.5. Pilot Project on Infant Home Care

8430. The Legislature finds and declares all of the following:

(a) That the demand for child care for infants and toddlers exceeds the supply.

(b) That persons employed as day care providers offer a needed and valuable service to infants and to their working parents.

(c) That family day care offers employment opportunities to individuals with a gift for caring and for nurturing young children.

(d) That because the provision of care for infants is an occupation in demand, the state can support the recruitment and training of individuals to enter this service profession.

8431. There is hereby established a three-year pilot project on infant home care for the purposes of developing and evaluating a model program for the recruitment, training, and monitoring of a network of infant care providers.

8432. (a) The State Department of Education shall contract with one nonprofit agency located in Los Angeles County, one nonprofit agency located in Orange County, and one nonprofit agency located in Butte County to establish the Infant Home Care Model Program.

(b) The model program shall recruit adults who meet state statutory and regulatory qualifications of infant home care providers

to become infant home care providers. The model program shall assist the individuals recruited, where appropriate, to meet the statutory and regulatory requirements of infant home care providers.

(c) The model program shall provide training to the adults recruited including, but not limited to, the following content areas:

(1) First aid and CPR.

(2) Health, safety, and nutrition.

(3) Child growth and development.

(4) Age appropriate programming and program resources.

(5) Effective parent communication and understanding of parental needs.

(6) Small business management.

(7) Community resources and the appropriate use of these resources.

(8) The home as a learning environment.

(d) The nonprofit agencies selected to establish the program shall provide the following services on an ongoing basis:

(1) Assist the adults recruited in obtaining a family day care license.

(2) Assist the adults recruited in registering with the Childcare Resource and Referral Agency in the area.

(3) Visit each home site on a regular basis to provide consultation and support.

(4) Provide short-term crisis intervention.

(5) Serve as a resource to provide access to goods and services vital to operating an infant care home.

(6) Provide a designated staff professional who shall be available.

(e) The nonprofit agencies shall conduct an annual evaluation of the effectiveness of the program in recruiting and establishing infant care homes and the effectiveness of the support services offered to the providers. Specific annual measurement outcomes shall be developed to include, but not be limited to:

(1) The number of adults recruited annually to become infant home care providers.

(2) The number of adults assisted annually in meeting the statutory and regulatory requirements of infant home care providers.

(3) The number of infant care homes established annually as a result of the program.

8433. The Legislative Analyst shall evaluate the success of the model program based on the indicators outlined in Section 8432 and based on an analysis of the agencies' annual evaluation of the effectiveness of the program. The Legislative Analyst shall report the results of the evaluation in the analysis of the 1991–92 Budget Bill.

SEC. 2. The sum of sixty thousand dollars ($60,000) is hereby appropriated from the General Fund for the 1989–90 fiscal year to the State Department of Education for the purposes of providing staff, including, but not limited to, a director, support personnel, and

trainers; training materials; and the agencies' administrative costs to establish, monitor, and evaluate the project established pursuant to Article 19.5 (commencing with Section 8430) of Chapter 2 of Part 6 of the Education Code.

It is the intent of the Legislature that funding for these purposes shall be provided for the second and third year of the pilot project in the 1990–91 and 1991–92 Budget Acts.

SEC. 3. It is the intent of the Legislature that no moneys appropriated pursuant to Section 2 of this act be used to cover the costs of providing the child care services under the model program.

CHAPTER 1186

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

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

I am deleting the $50,000 appropriation contained in Section 4 of Assembly Bill No 1562

This bill would require the Superintendent of Public Instruction (SPI) to report on the number and type of school and school district reports required or requested by the federal government, the State, county offices of education or governing boards of school districts The intent would be to identify and eliminate insignificant reports. This bill appropriates $50,000 to the Superintendent to carry out the provisions of this bill

The costs associated with this bill are minor and should be absorbed by the Department of Education The demands placed on budget resources require all of us to set priorities With legislation I will be signing and the budget enacted in July 1989, more than $50 billion in state funds will be appropriated this fiscal year 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

With this deletion, I approve Assembly Bill No. 1562

GEORGE DEUKMEJIAN, Governor

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 reduce the burden of paperwork on all school districts and thereby save staff time and lower administrative costs.

SEC. 2. Not later than November 1, 1990, the Superintendent of Public Instruction shall report to the education policy committees of the Legislature and to the Joint Legislative Budget Committee the following information:

(a) The number of reports that schools and school districts are mandated by the federal government, the state, the county superintendents of schools, or the governing boards of school districts to file with the state and the identity of each of those reports.

(b) The number of reports that school districts are asked, but not mandated, to file with the state and the identity of each of those reports.

(c) The use, application, and utility of the data that is collected from school districts as identified in subdivisions (a) and (b) and submitted to the Superintendent of Public Instruction and the time of school principals, teachers, and clerks that is required to prepare the reports.

SEC. 3. The Legislative Analyst shall include in the Analysis of the 1991–92 Budget Bill a review of the report required by Section 2 of this act. The Legislative Analyst shall include recommendations that would provide for a reduction in paperwork and reporting by school districts, with special attention to those school districts with 2,500 or fewer regular average daily attendance. The Legislative Analyst shall consider the consolidation or deletion of reports, reduction in frequency of reports, and abbreviated reports as means to reduce the burden imposed on all school districts in making reports to the State Department of Education.

SEC. 4. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the purposes of Section 2 of this act.

SEC. 5. Funding for purposes of this act shall not exceed the appropriation specified in Section 4 of this act.

CHAPTER 1187

An act relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

I am reducing the $125,000 appropriation contained in Section 2 of Senate Bill No 410 to $85,000 by deleting the $40,000 appropriation for cost associated with conducting the survey and preparing the reports for programs administered by the State Department of Education.

This bill would require the Superintendent of Public Instruction to submit two reports that together are intended to cover all programs directed at high-risk pupils and specialized program participants One report would focus on programs available in each county, and the other would focus on programs administered by the State Department of Education. $85,000 would be designated for the report and associated survey on programs operated and administered by the counties The remaining $40,000 would be designated for the report on programs administered by the State Department of Education.

I believe that the Department can complete the report on the programs that it administers within existing resources.

With this reduction, I approve Senate Bill No. 410

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. (a) The Superintendent of Public Instruction shall prepare a report to be submitted to the Legislature on or before December 31, 1989, to identify in specific terms for every county each educational program directed at high-risk pupils and

specialized program participants. The report shall include information obtained from a survey of each county office of education regarding the relative success of these programs that are operated in each school district within each respective county. The report shall also include a description of the allocation of funding to each program and shall provide a comparative analysis of the level of funding for these programs for each county.

(b) The Superintendent of Public Instruction shall submit a report to the Legislature on or before December 31, 1989, on the programs administered by the State Department of Education for the purpose of assisting pupils who are at risk of not completing a high school education and programs that are designed to provide education and training to noncollege bound youth. The report shall include all available recent indicators of the relative success of the programs, based upon each individual program. The report shall also include a description of the allocation of funding to each program and shall provide a comparative analysis of the level of funding for these programs in each county.

(c) It is the intent of the Legislature that the reports required by this act shall encompass all programs that are directed at high-risk pupils and specialized program participants, and that they shall not be limited to statutorily authorized programs. The Superintendent of Public Instruction may incorporate the report required by this section into the report required by Section 1 of this act.

SEC. 2. The sum of one hundred twenty-five thousand dollars ($125,000) is hereby appropriated from the General Fund to the State Department of Education as follows:

(1) For costs associated with conducting the survey and preparing the reports required by subdivision (a) of Section 1 of this act for programs operated and administered by the counties	$85,000
(2) For costs associated with conducting the survey and preparing the reports required by subdivision (b) of Section 1 of this act for programs administered by the State Department of Education	$40,000

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The escalating cost of education for kindergarten and grades 1 to 12, inclusive, and the corresponding decrease in available resources to fund essential educational programs requires a careful analysis of current expenditures for existing programs which are targeted toward keeping pupils in school.

In order to require the Superintendent of Public Instruction to prepare and submit the reports required by Section 1 of this act on

educational programs which are directed at high-risk pupils and specialized program participants at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1188

An act to add Article 11.5 (commencing with Section 69730) to Chapter 2 of Part 42 of the Education Code, relating to postsecondary education.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

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

(a) High school students are a valuable resource of the State of California. Among the contributions high school students make to the state are growth of the state's economy, improvement of the welfare of the general populace, and, by their attendance in school, promotion of the educational attainment of its citizenry. In addition, many high school students make contributions to their community through volunteer activities in local service programs.

(b) Many complex problems face our society today that cannot be effectively addressed solely by the public or private sector. Assistance to victims of poverty, child care services, care for the elderly, services for the handicapped, assistance for victims of the physically and mentally handicapped, aid to victims of drug and alcohol abuse, and aid to the homeless, among other needs, cannot be provided by the public or private sector alone.

(c) The nonprofit community services sector of our economy provides the state with valuable services that help address those complex problems. The service organizations that comprise that sector in each community rely upon the volunteer resources of individuals, including high school students, to help solve those problems where they exist in the community.

(d) The State of California can encourage high schools to promote volunteerism in service organizations by recognizing the unique contributions high school students have made to the community. This recognition can occur through the Willie L. Brown, Jr. Community Service Scholarship Program, as established under this act.

SEC. 2 Article 11.5 (commencing with Section 69730) is added to Chapter 2 of Part 42 of the Education Code, to read:

Article 11.5. Willie L. Brown, Jr. Community Service Scholarship Program

69730. There is hereby established the Willie L. Brown, Jr. Community Service Scholarship Program, the purpose of which shall be to reward pupils for volunteering to serve their communities, to address serious social and economic community needs, and to increase the tendency of youth to be involved in public service. The program shall be administered by the Student Aid Commission. Pursuant to that authority, the commission shall do all of the following.

(a) Provide information regarding the program to each school district in this state. Any public high school of this state, other than any continuation or alternative high school, may participate in the program upon request. Each participating high school shall provide adequate notice to its pupils of the availability of the scholarships authorized under this article.

(b) Establish a model scholarship application form of no more than one page in length, requiring no more than 25 data elements, and provide copies of that application form to all participating high schools. Participating high schools may use either the model form or their own scholarship application form. Scholarship funds to be awarded pursuant to this article shall be provided without regard to the requirements otherwise set forth in this chapter.

(c) Conduct periodic reviews in order to ensure that the selection of scholarship recipients is conducted in compliance with this article.

69731. (a) At least one scholarship under this article shall be made available each year to each high school participating in the program to award to a pupil who is enrolled in that high school. One additional scholarship shall be available each year to each participating high school for each 1,000 pupils enrolled in that school in excess of 1,000 pupils.

(b) Each participating high school shall establish and maintain a community service scholarship committee that consists of the following persons:

(1) One full-time teacher employed by the school.

(2) One employee of the school who is a classified employee or pupil counselor, and who has contributed to the academic or personal development of high school pupils. In the event that no person meets those qualifications, the principal of the school shall designate any other employee of the school to serve on the committee

(3) One parent of any pupil who is enrolled in the high school but is not an applicant for a scholarship under this article.

(4) Two representatives from community organizations or agencies, as described in subdivision (c).

(c) Scholarships made available to the participating high school shall be awarded by the community service scholarship committee to pupil applicants determined by a majority vote of the membership

of the committee to have made significant contributions to the community through community service. For the purposes of this article, "community service" means volunteer work for any nonprofit organization that meets the description set forth in paragraph (3) of subdivision (c) of Section 501 of Title 26 of the United States Code, or for any other community service agency or organization that is nonprofit, nonpartisan, and nonsectarian, which work is performed to further purposes of education, environmental quality, health care, local, state, or federally funded public assistance, public safety crime prevention or control, transportation, recreation, housing and neighborhood improvement, rural development, conservation, child care, senior citizens' quality of life, outdoor beautification, or any other purpose of human betterment and community improvement. In the event that the community service scholarship committee determines that the number of applicants who qualify for a scholarship under this subdivision exceeds the number of scholarships available to the high school under this article, the committee shall apply the following additional criteria in order to select scholarship recipients:

(1) The applicant's financial status, including his or her ability to finance a college education.

(2) The extent to which the applicant's capacity to provide volunteer service has been limited by the applicant's other extracurricular activities, summer or part-time employment, or responsibilities to his or her family.

(3) Whether the applicant would be the first member of his or her immediate family to attend an institution of higher education.

(d) Each scholarship awarded shall be for a period of one year, subject to the requirement that no scholarship funding shall be payable as to any academic term in which the recipient fails to both maintain a course load of at least six semester units or the equivalent and meet or exceed the institution's standards for satisfactory academic progress.

(e) No later than June 15 of each year, the community service scholarship committee of each participating high school shall notify the Student Aid Commission of the names of the scholarship recipients selected by the committee, or, alternatively, that no pupil applicants were determined by the committee to qualify for a scholarship pursuant to subdivision (c). No later than August 15 of that year, the commission shall provide funding for the subsequent academic year for each scholarship awarded pursuant to this section, in an amount equal to the amount of the undergraduate student fees charged for that school year by the University of California, except that no such allotment shall be in an amount of less than one thousand five hundred dollars ($1,500).

(f) Scholarship funding provided under this article may be applied to educational costs incurred by the recipient pursuant to his or her attendance at an institution of higher education. Those costs may include, but are not necessarily limited to, tuition, fees,

instructional materials, and room and board.

(g) Scholarships shall be funded under this article to the extent funds are made available for that purpose.

(h) This article shall not be construed to prevent any participating high school or pupil from seeking private or other funding sources to supplement the amount of any scholarship or scholarships awarded under this article. Any scholarship or scholarships awarded under this article shall augment, and not supplant, student financial aid from other sources.

69732. Each applicant for a scholarship under this article shall meet all of the following qualifications:

(a) Is maintaining satisfactory educational progress, as defined in Section 35160.5.

(b) Has provided volunteer service to one or more community organizations or agencies, as described in subdivision (c).

(c) Is eligible to graduate from high school in the school year in which the application is made.

(d) Intends to attend an institution of higher education in California during the subsequent school year, and to maintain a course load of at least six semester units or the equivalent.

(e) Is a resident of California.

69733. No later than September 1, 1991, and annually thereafter, the Student Aid Commission shall submit to the education policy and fiscal committees of the Legislature a report that specifies, but is not necessarily limited to, the number of high schools, scholarship applicants, and scholarship recipients who, in the prior school year, participated in the program set forth in this article.

SEC. 3. This bill shall become operative on July 1, 1990.

CHAPTER 1189

An act to add and repeal Section 11487.5 of the Welfare and Institutions Code, relating to public assistance.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 11487.5 is added to the Welfare and Institutions Code, to read:

11487.5. (a) Notwithstanding any other provision of law, including Sections 11487 and 15204.5, the department shall implement a pilot program in the County of Fresno whereby the county shall be reimbursed for overpayment recoveries under Section 11004 as follows:

(1) If the county's error rate is below the statewide average, the county shall be reimbursed for all necessary administrative costs

incurred to make a recovery of overpayments under Section 11004, not to exceed the state's share of the overpayments recovered by the county.

(2) (A) If the county's error rate is above the state average, the county may do either of the following:

(i) Retain only the county share of the recovered grant payment.

(ii) Be reimbursed for all necessary administrative costs incurred to make a recovery of overpayments under Section 11004, not to exceed the state's share of the overpayments recovered, and dedicate all of these reimbursements to support eligibility functions.

(B) For purposes of this paragraph, "eligibility functions" means intake, continuing eligibility, and quality control activities.

(b) On or before January 30, 1992, the department shall report to the appropriate committees of the Legislature on the implementation of this section.

(c) 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 1190

An act to amend and supplement the Budget Act of 1989 by adding Items 6610-301-782 and 6870-3210-785 to Section 2.00 thereof, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Item 6610-301-782 is added to Section 2.00 of the Budget Act of 1989, to read:

6610-301-782—For capital outlay, Trustees of the California State University and the California State University, payable from the 1986 Higher Education Capital Outlay Bond Fund		1,300,000
Schedule:		
(a) San Jose State University, site acquisition	1,300,000	

SEC. 2. Item 6870-321-785 is added to Section 2.00 of the Budget Act of 1989, to read:

6870-321-785—For capital outlay, Board of Governors of the California Community Colleges, to be allocated to community college districts for expenditure by these districts, payable from the 1988 Higher Edu-

cation Capital Outlay Bond Fund..... 2,411,000
Schedule:
(a) Saddleback Community College District Irvine Valley College
(1) 40.45.116-Cafeteria—Construction 1,257,000
Saddleback College
(2) 40.45.207-Cafeteria—Construction 1,154,000

CHAPTER 1191

An act to amend Section 19612.7 of, and to add Section 19612.8 to, the Business and Professions Code, relating to horseracing.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 19612.7 of the Business and Professions Code is amended to read:

19612.7. (a) Notwithstanding Section 19612.6 or any other provision of law, any association conducting a harness racing meeting at the California Exposition and State Fair or the Los Angeles County Fairgrounds in Pomona shall pay a daily license fee of 0.5 percent of its conventional and exotic parimutuel handle.

(b) The amount remaining after payment of the state license fee pursuant to subdivision (a) shall be distributed between commissions and purses as agreed to by the association conducting the meeting and the organization representing the horsemen participating in the meeting.

(c) In addition to any other amount which may be retained from conventional and exotic parimutuel pools, an association subject to subdivision (a) may retain an additional 1.5 percent of the total amount handled in conventional and exotic parimutuel pools for distribution as additional commissions.

(d) Notwithstanding subdivision (c) of Section 19596.5, the state license fee for wagering at satellite wagering facilities on a harness racing meeting at the California Exposition and State Fair with an average daily handle of six hundred fifty thousand dollars ($650,000) or less shall be 0.5 percent of the total conventional and exotic parimutuel handle at satellite wagering facilities on that meeting. The amount remaining from the deduction at satellite wagering facilities for that meeting, after payment of the state license fee pursuant to this subdivision and after distribution of other amounts as provided in subdivisions (c) and (e) of Section 19596.5, shall be distributed between commissions and purses as agreed to by the association conducting the meeting and the organization

representing the horsemen participating in the meeting.

SEC. 2. Section 19612.8 is added to the Business and Professions Code, to read:

19612.8. Notwithstanding Section 19612.7 or any other provision of law, any association conducting a harness racing meeting at the California Exposition and State Fair or the Los Angeles County Fairgrounds in Pomona shall pay not less than the actual amount necessary to cover the costs for compensation, including any fringe benefits, to stewards and official veterinarians and to cover the costs for that racing meeting, as provided by the board under Section 19442.

CHAPTER 1192

An act to amend Section 19613 of, and to add Section 19596.1 to, the Business and Professions Code, relating to horseracing.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 19596.1 is added to the Business and Professions Code, to read:

19596.1. Notwithstanding any other provision of law, the board may authorize an association conducting a race meeting to accept wagers on the results of out-of-state harness or quarter horse feature races or stake races, and, with the board's approval and with the concurrence of the horsemen's organization contracting with the association, other designated harness or quarter horse races during the period it is conducting the racing meeting on days and nights when live races are being run, if the following conditions are met:

(a) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(b) Wagering is offered only within the racing inclosure and only within 36 hours of the running of the out-of-state feature race.

SEC. 2. Section 19613 of the Business and Professions Code is amended to read:

19613. (a) Except as provided in subdivisions (b), (c), (d), (e), and (f), the portion deducted for purses pursuant to this chapter shall be paid to or for the benefit of the horsemen at the racing meeting.

(b) Any association other than a fair which conducts a thoroughbred racing meeting shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expense and services rendered to horsemen an amount equivalent to 1.5 percent of the

portion, and for a pension plan for backstretch personnel to be administered by the horsemen's organization, an amount equivalent to an additional 1 percent of the portion. The remainder of the portion shall be distributed as purses.

(c) Any other association may pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expense and services rendered to horsemen an amount out of the portion as may be determined by the association by agreement or otherwise, but, in all events, shall include, relative to a thoroughbred horsemen's organization, 1 percent of the portion for a pension plan for backstretch personnel to be administered by the horsemen's organization. The remainder of the portion shall be distributed as purses.

(d) Notwithstanding subdivisions (b) and (c), any association conducting a fair racing meeting or conducting a mixed breed racing meeting shall pay to the horsemen's organizations contracting with the association with respect to the conduct of races for their respective breeds of horses at the meetings for administrative expense and services rendered to their respective horsemen those amounts out of the portion as determined by the horsemen's organization for the respective breeds with the approval of the board. The amount to be distributed as purses or commissions for any race meet under this subdivision shall be based on respective parimutuel pools during the previous corresponding meeting, if any.

Pursuant to this subdivision, amounts equivalent to 3 percent of the portion for the horsemen's organization shall be distributed to any thoroughbred horsemen's organizations contracting with an association for a fair racing meeting or participating in mixed breed racing meetings as follows: 1 percent for administrative expenses and services rendered to their respective horsemen, 1 percent for welfare funds, and 1 percent for a pension program for backstretch personnel, to be administered by the thoroughbred horsemen's organizations.

(e) Any association other than a fair which conducts a quarter horse racing meeting, except a mixed breed meeting, shall pay to the horsemen's organization contracting with the association with respect to the conduct of racing meetings for administrative expense and services rendered to horsemen an amount equivalent to 2.5 percent of the portion. The remainder of the portion shall be distributed as purses.

(f) For racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, the distribution of purses shall be governed by the following:

(1) If the association conducted a racing meeting within the past 15 months and a contract was in existence for that meeting with the horsemen's organization and the association is conducting a subsequent meeting for the same breed or mixed breeds, the

amounts payable to the horsemen's organization under subdivision (c) shall be computed under the provisions of the last signed contract between the parties.

(2) This subdivision applies regardless of the cause of the failure to execute a contract, whether that failure is a result of inadvertence or otherwise.

(3) For racing meetings which do not come within paragraph (1), the board shall, within 15 days after the commencement of the racing meeting, determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts.

CHAPTER 1193

An act to amend Section 8878.16 of the Government Code, and to amend Section 53151 of, and to add and repeal Chapter 14.5 (commencing with Section 50860) to Part 2 of Division 31 of, the Health and Safety Code, relating to housing.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 8878.16 of the Government Code is amended to read:

8878.16. As used in this chapter, and for the purposes of this chapter as used in the State General Obligation Bond Law, the following words have the following meanings:

(a) "Bond" means a bond, authorized by Sections 8878.20 and 8878.25, that is tax exempt under both state and federal law, or a bond that is tax exempt under state law and taxable under federal law.

(b) "Committee" means the California Earthquake Safety and Housing Rehabilitation Finance Committee.

(c) "Department" means Department of Housing and Community Development.

(d) "Fund" means the Housing Rehabilitation Loan Fund establish by Section 50661 of the Health and Safety Code.

(e) "Local agency" means any city, city and county, or county.

SEC. 2. Section 53151 of the Health and Safety Code is amended to read:

53151. As used in this part, the following terms have the following meanings:

(a) "Bond" means a bond, authorized by Section 53170, that is tax exempt under both state and federal law, or a bond that is tax exempt under state law and taxable under federal law.

(b) "Committee" means the Housing Committee created pursuant to Section 53172.

(c) "Fund" means the Home Building and Rehabilitation Fund created pursuant to Section 53160.

SEC. 3. Chapter 14.5 (commencing with Section 50860) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

CHAPTER 14.5. LOW-INCOME HOUSING POLICY

50860. The Legislature finds and declares that California continues to experience a critical shortage of housing. The Legislature reaffirms that the subject of housing, including housing for lower income households, is of statewide importance to the health, safety, and welfare of the residents of this state and that the attainment of the goal of a decent home and suitable living environment for every California family is a priority of the highest order.

The Legislature finds and declares that governmental actions and policies, including those of local governments, which significantly impede the attainment of this goal are a matter of statewide concern and contrary to state policy.

50861. (a) The Legislature finds and declares all of the following:

(1) There are limited state resources for the purposes of assisting the attainment of the state's housing goal.

(2) It is the policy of the state to apply those resources in order that they achieve maximum benefit, and to facilitate rather than impede efforts to provide housing opportunities for lower income households within communities where this housing has not historically been provided.

(3) Most housing for lower income households is provided by the private sector and the state's limited resources available to assist in the provision of housing for lower income households should be targeted to enhance and complement the provision of this type of housing by the private sector.

(4) It is local government's critical role to assist in attaining the state's housing goal by assuring that local governmental policies encourage the provision of housing for lower income households.

(5) Local governments shall administer their regulatory policies in a manner to encourage the production and availability of housing, especially housing for lower income persons and households, in order to assist in attainment of the state's housing goal and the purposes of this division and to carry out the intent of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(b) It is the Intent of the Legislature to enact future legislation to take effect on or after January 1, 1992, to ensure that funds made available pursuant to Proposition 77 and Proposition 84 shall be administered in a manner that encourages the efficient use of revenues, and that priority shall be given to projects and programs proposed for a city, county, or city and county which administers its regulatory policies in a manner which, taken as a whole, encourages

and facilitates the production and the availability of housing for lower income households. The Legislature further intends to facilitate rather than impede efforts to provide housing opportunities for lower income households within communities where this housing has not historically been provided.

(c) For purposes of developing a standard and procedure for making the determinations to be required pursuant to subdivision (b):

(1) The department shall require from all local agencies applying for funds under Propositions 77 and 84 to submit, as part of its application after July 1, 1990, a report on the actions it is taking to implement its housing element, including policies or programs especially targeted towards providing housing for lower income households. All other applicants shall be required to request a similar report from the locality in which the housing is to be provided.

(2) The Legislative Analyst, subject to sufficient funding, shall review the housing element reports and any other materials the Legislative Analyst deems appropriate in order to submit a report to the Legislature and the Governor on or before July 1, 1991. The report shall discuss alternative methodologies for determining a locality's substantial progress toward implementing its housing elements, including, but not limited to, meeting its regional share of lower income housing. The department shall make all housing element reports available to the Legislative Analyst.

(3) The department shall not utilize the report from any city, county, or city and county in evaluating its application prior to January 1, 1992.

(d) This chapter 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.

50862. This chapter shall only apply to assistance allocated for projects for which applications are submitted after January 1, 1991.

CHAPTER 1194

An act to amend Section 17980.7 of, and to add Section 17980.8 to, the Health and Safety Code, relating to landlord-tenant relations.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 17980.7 of the Health and Safety Code is amended to read:

17980.7. If the owner fails to comply with the terms of the order or notice pursuant to Section 17980.6, the following provisions shall apply:

(a) The enforcement agency may seek and the court shall order imposition of the penalties provided for under Chapter 6 (commencing with Section 17995).

(b) The enforcement agency may seek and the court may order the owner to not claim any deduction with respect to state taxes for interest, taxes, expenses, depreciation, or amortization paid or incurred with respect to the cited structure, in the taxable year of the initial order or notice, in lieu of the enforcement agency processing a violation in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code.

If the owner fails to comply with the terms of the order or notice to correct the condition that caused the violation pursuant to subdivision (a) of Section 17980.5, the court may order the owner to not claim these tax benefits for the following year.

(c) If the court finds that a building is in a condition which substantially endangers the health and safety of residents pursuant to subdivision (a) of Section 17980.6, upon the entry of any order or judgment the court shall do all of the following:

(1) Order the owner to pay all reasonable and actual costs of the enforcement agency including, but not limited to, inspection costs, investigation costs, enforcement costs, attorney fees or costs, and all costs of prosecution.

(2) Order that the local enforcement agency shall provide the tenant with notice of the court order or judgment.

(3) (A) Order that if the owner undertakes repairs or rehabilitation as a result of being cited for a notice under this chapter, and if the conditions of the premises or the repair or rehabilitation thereof significantly affect the safe and sanitary use of the premises by any lawful tenant, such that the tenant cannot safely reside in the premises, then the owner shall provide or pay relocation benefits to each lawful tenant. These benefits shall consist of actual reasonable moving and storage costs and relocation compensation. The actual moving and storage costs shall consist of all of the following:

(i) Transportation of the tenant's personal property to the new location. The new location shall be in close proximity to the substandard premises, except where relocation to a new location beyond a close proximity is determined by the court to be justified.

(ii) Packing, crating, unpacking, and uncrating the tenant's personal property.

(iii) Insurance of the tenant's property while in transit.

(iv) The reasonable replacement value of property lost, stolen, or damaged (not through the fault or negligence of the displaced person, his or her agent or employee) in the process of moving, where insurance covering such loss, theft, or damage is not reasonably available.

(v) The cost of disconnecting, dismantling, removing, reassembling, reconnecting, and reinstalling machinery, equipment, or other personal property of the tenant, including connection

charges imposed by utility companies for starting utility service.

The relocation compensation shall be an amount equal to the differential between the contract rent and the fair market rental value determined by the federal Department of Housing and Urban Development for a unit of comparable size within the area for the period that the unit is being repaired, not to exceed 120 days.

If the court finds that a tenant has been substantially responsible for causing or substantially contributing to the substandard conditions, then the relocation benefits of this section shall not be paid to this tenant. Each other tenant on the premises who has been ordered to relocate due to the substandard conditions and who is not substantially responsible for causing or contributing to the conditions shall be paid these benefits and moving costs at the time that he or she actually relocates.

(B) Determine the date when the tenant is to relocate, and order the tenant to notify the enforcement agency and the owner of the address of the premises to which he has relocated within five days after the relocation.

(C) Order that the owner shall offer the first right to occupancy of the premises to each tenant who received benefits pursuant to subparagraph (A), before letting the unit for rent to a third party. The owner's offer on the first right to occupancy to the tenant shall be in writing, and sent by first-class certified mail to the address given by the tenant at the time of relocation. If the owner has not been provided the tenant's address by the tenant as prescribed by this section, the owner shall not be required to provide notice under this section or offer the tenant the right to return to occupancy.

The tenant shall notify the owner in writing that he or she will occupy the unit. The notice shall be sent by first-class certified mail no later than 10 days after the notice has been mailed by the owner.

(4) Order that failure to comply with any abatement order under this chapter shall be punishable by civil contempt, penalties under Chapter 6 (commencing with Section 17995), and any other penalties and fines as are available.

(d) The initiation of a proceeding or entry of a judgment pursuant to this section or Section 17980.6 shall be deemed to be a "proceeding" or "judgment" as provided by paragraph (4) or (5) of subdivision (a) of Section 1942.5 of the Civil Code.

(e) The term "owner," for the purposes of this section, shall include the owner, including any public entity that owns residential real property, at the time of the initial notice or order and any successor in interest who had actual or constructive knowledge of the notice, order, or prosecution.

(f) These remedies shall be in addition to any other remedies provided by law.

(g) Nothing in this section or in Section 17980.6 shall impair the rights of an owner exercising his or her rights established pursuant to Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code.

SEC. 2. Section 17980.8 is added to the Health and Safety Code, to read:

17980.8. An enforcement agency which properly declares any dwelling a nuisance and, using the notice requirements and procedures specified in Subchapter 1 (commencing with Section 1) of Chapter 1 of Part 1 of Title 25 of the California Code of Regulations, confirms the declaration by resolution of its governing board shall be deemed to have acquired jurisdiction to abate the nuisance by repairing or causing to have repairs made to the property, by razing or removing the dwelling or in any other way causing the nuisance to be abated.

(b) The enforcement agency shall keep an itemized account of all of the expenses involved in abating the nuisance, including the razing or removing of the dwelling. The enforcement agency shall cause to be posted conspicuously on the property from which the nuisance was abated, repairs made or from which the dwelling was razed or removed, an expense statement. This statement shall be verified by the officer of the enforcement agency in charge of doing the work, showing the reasonable gross and net expense of the abatement actions taken by the agency, including the expense of inspections; repairs, if any; the cost of the razing or removing of the building, if applicable; and any other costs of abatement, together with a notice of the time and place when and where the statement shall be submitted to the governing board of the enforcement agency for approval and confirmation. In addition to being posted on the property, this statement shall be sent by certified mail to each owner and other interested party, as specified in Subchapter 1 (commencing with Section 1) of Chapter 1 of Part 1 of Title 25 of the California Code of Regulations.

(c) At the meeting noticed pursuant to subdivision (b), the governing board shall consider any objections or protests, if any, which may be raised by the property owner liable to be assessed for the cost of such work, or by any other interested persons. If the governing board confirms the statement of costs of abatement, those costs shall be the obligation of each owner of the property to pay to the public entity which has incurred them.

(d) Notwithstanding any other provision of law, any hearing required under this section shall be conducted in accordance with requirements adopted by the enforcement agency that are in substantial compliance with those contained in Chapter 13 (commencing with Section 1301), or the successor provisions to that chapter, of the most recent edition of the Uniform Housing Code of the International Conference of Building Officials.

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.

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

CHAPTER 1195

An act to amend Section 24202 of, and to add Section 25375 to, the Business and Professions Code, and to amend Sections 11470, 11473, 11488, 11488.4, 11488.5, and 11489 of, and to add Section 11471.1 to, the Health and Safety Code, relating to controlled substances, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 24202 of the Business and Professions Code is amended to read:

24202. (a) All state and local law enforcement agencies shall immediately notify the department of any arrests made by them for violations over which the department has jurisdiction which involve a licensee or licensed premises. The department shall promptly cause an investigation to be made as to whether grounds exist for suspension or revocation of the license or licenses of the licensee.

(b) The department may not open or add an entry to a file or initiate an investigation of a licensee or suspend or revoke a license (1) solely because the licensee or an agent acting on behalf of the licensee has reported to a state or local law enforcement agency that suspected controlled substance violations have taken place on the licensed premises or (2) solely based on activities constituting violations described in such a report, unless the violations reported occurred with the actual knowledge and willful consent of the licensee.

SEC. 1.2. Section 25375 is added to the Business and Professions Code, to read:

25375. (a) Upon 10 days notice to a person who holds a license described in this division, the Attorney General or a district attorney shall seek an order from the superior court for the seizure of a license described in this division for purposes of seeking forfeiture of the license pursuant to Sections 11470 to 11492, inclusive, of the Health and Safety Code. From the time of notice until the hearing to establish probable cause, as provided by this section, the license may not be sold or transferred. The 10-day period may be extended by the court for good cause or upon the stipulation of the parties.

(b) A petition for forfeiture pursuant to Section 11488.4 of the Health and Safety Code shall be filed within 10 days of the service

of notice pursuant to this section.

(c) At the hearing, the Attorney General or district attorney shall establish probable cause that the license is subject to forfeiture pursuant to Section 11470 of the Health and Safety Code. The showing of probable cause may be established by deposition, affidavit, declaration, prior judicial testimony, or other evidence. The licensee may produce evidence to refute the showing of probable cause.

(d) If the court determines there is probable cause that the license is subject to forfeiture, it shall issue an order for its seizure by any peace officer within its jurisdiction.

(e) If probable cause is not established at the hearing, or if the hearing is neither held within the 10-day period nor continued for good cause or by stipulation of the parties, the prohibition against the sale or transfer of the license shall immediately cease and the petition for forfeiture shall be dismissed.

(f) Immediately upon seizure of the license, the peace officer shall surrender the license to the department by certified mail, along with written notice to the department of the seizure and intention to seek the initiation of forfeiture proceedings. No person who holds any interest in a license shall exercise any privileges of that license after it has been seized and during the time it is surrendered to the department pursuant to this subdivision.

However, if the licensee appears and in any manner contest the showing of probable cause required by this subdivision, the licensee shall be barred from bringing a motion pursuant to paragraph (2) of subdivision (g) of Section 11488.4 of the Health and Safety Code.

(g) Notwithstanding Article 5 (commencing with Section 23090) of Chapter 1.5 of this division, the Attorney General or a district attorney may seek a pendente lite order as provided in Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code relating to the custody, right, title, interest, and exercise of rights and privileges as related to a license described in this division which is the subject of a forfeiture proceeding pursuant to Section 11488.4 of the Health and Safety Code or Section 186.4 of the Penal Code.

(h) Rights and privileges related to any license which is the subject of a forfeiture proceeding and which has been seized and surrendered to the department pursuant to this section may be exercised solely by a receiver appointed pursuant to Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code. No license, rights, or privileges of a license may be exercised by a receiver until that person has been found qualified to hold a license in his or her own right by the department pursuant to this division and the license has been issued to the custody of the receiver. Chapter 6 (commencing with Section 23950) of this division does not apply to a receiver appointed pursuant to this paragraph. Any receiver appointed pursuant to Section 11492 of the Health and Safety Code or Section 186.6 of the Penal Code who exercises privileges of a license issued to his or her custody shall be subject to

disciplinary proceedings and may have the license suspended or revoked in the same manner as if he or she were licensed directly pursuant to this division.

(i) Upon the entry of a judgment of forfeiture pursuant to Section 11488.5 of the Health and Safety Code or Section 186.6 of the Penal Code, or a declaration of forfeiture pursuant to subdivision (j) of Section 11488.5 of the Health and Safety Code forfeiting a license described in this division, the state or local government entity shall sell and transfer the license in accordance with Chapter 6 (commencing with Section 23950) of this division. The proceeds of that sale and transfer shall be allocated as specified in Section 11489 of the Health and Safety Code or Section 186.8 of the Penal Code, as appropriate.

(j) Any alcoholic beverage which is the subject of a judgment of forfeiture pursuant to Section 11488.5 of the Health and Safety Code or Section 186.7 of the Penal Code, or a declaration of forfeiture pursuant to subdivision (i) of Section 11488.4 of the Health and Safety Code may be sold, transferred, and delivered by the state or local governmental entity, as specified in Section 11489 of the Health and Safety Code or Section 186.8 of the Penal Code, to a person licensed to sell that type of alcoholic beverage pursuant to this division.

SEC. 1.3. Section 11470 of the Health and Safety Code, as amended by Section 1 of Chapter 1492 of the Statutes of 1988, 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) (1) All books, computers, records, and research products and materials, including formulas, microfilm, tapes, data, computer programs, and software which are used, or intended for use, in violation of this division.

(2) Any firearm or other weapon, device, or ammunition subject to Title 2 (commencing with Section 12000) of Part 4 of the Penal Code which is used in any manner to facilitate or which is possessed or used in the commission of a violation of this division.

(e) (1) The interest of any registered owner of a boat, airplane, or any vehicle, which has been used in any manner to facilitate the possession for sale or sale of 7.125 grams or more of a substance containing either 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 a Schedule I controlled substance except marijuana, peyote, or psilocybin; five pounds dry weight or more of

marijuana, peyote, or psilocybin; or 14.25 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, or methamphetamine; or 14.25 grams or more of a substance containing a Schedule II controlled substance. However, an interest not to exceed ten thousand dollars ($10,000) in a vehicle which may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, which is a community property asset of a person who is a registered owner of the vehicle other than the person whose conduct renders the vehicle subject to forfeiture, and which is the sole class 3 or 4 vehicle available to that registered owner's immediate family, shall not be subject to forfeiture. The exemption from forfeiture provided by this subdivision shall not apply if pursuant to subdivision (e) of Section 11488.5 the trier of fact finds the person claiming the exemption knew or should have known of the unlawful use of the property.

(2) The interest of any person in a license described in Section 23393, 23394, or 23396 of the Business and Professions Code when the licensed premises were used or intended to be used, with the actual knowledge and willful consent of the licensee, to facilitate any violation of Sections 11351, 11351.5, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, and 11382 of this code, or Section 182 of the Penal Code, insofar as the offense involves the manufacture, sale, possession for sale, offer for sale, or offer to manufacture, a controlled substance, or conspiracy to commit at least one of those offenses.

(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, which were 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) Real property related to a violation, whether charged or not, of Section 11366, 11366.5, 11366.6, or 11379.6. However, an interest not to exceed one hundred thousand dollars ($100,000) in real property which is used as a family residence and which is owned by two or more persons shall not be subject to forfeiture. The exemption from forfeiture provided by this subdivision shall not apply if pursuant to subdivision (e) of Section 11488.5 the trier of fact finds the person claiming the exemption knew or should have known of the unlawful use of the property.

(h) All right, title, and interest in any property described in this

section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter.

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 or 11488.6, establishes an interest in the property seized, which interest arose prior to the seizure or the filing of the petition for forfeiture pursuant to this chapter, whichever occurs first, notwithstanding that the interest in the property being claimed was acquired from a person whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

SEC. 1.4. Section 11471.1 is added to the Health and Safety Code, to read:

11471.1. (a) Notwithstanding any other provision of this division, a license described in Section 23393, 23394, or 23396 of the Business and Professions Code which is subject to forfeiture under this division may be seized by any peace officer only pursuant to the order of a court issued pursuant to Section 25375 of the Business and Professions Code.

SEC. 1.5. Section 11473 of the Health and Safety Code, as amended by Section 3 of Chapter 1492 of the Statutes of 1988, is amended to read:

11473. Except as provided in Section 11473.3, all seizures under provisions of this chapter, except seizures of vehicles, boats, or airplanes, as specified in subdivision (e) of Section 11470, or seizures of moneys, negotiable instruments, securities, or other things of value as specified in subdivisions (c), (d), and (f) of Section 11470, shall, upon conviction of the owner or defendant, be ordered destroyed by the court in which conviction was had.

SEC. 2. Section 11488 of the Health and Safety Code, as amended by Section 7 of Chapter 1492 of the Statutes of 1988, is amended to read:

11488. (a) Any peace officer of this state, incident or 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, 11382, or 11383 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 Section 11470.

(b) The peace officer shall 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).

(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 or, if the individual is not present on the premises, the receipt shall be left in a prominent place at the premises.

(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.

SEC. 3. Section 11488.4 of the Health and Safety Code, as amended by Section 9 of Chapter 1492 of the Statutes of 1988, 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 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 certified 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) The Attorney General, district attorney, or law enforcement agency which made the seizure shall make an investigation into any

right, title, interest, or lien of record with the Department of Motor Vehicles or appropriate federal agency as to a vehicle, boat, or airplane. If the investigation discloses 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, the Attorney General or district attorney 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) (1) No sooner than 10 days after a petition is filed pursuant to Section 11488.4, a claimant, who alleges standing based on an interest in the property which arose prior to the seizure or filing of the petition for forfeiture, whichever occurs first, may move the court for the return of the property named in the claim on the grounds that there is not probable cause to believe that the property is subject to forfeiture pursuant to Section 11470, or is not automatically forfeitable or subject to court order of forfeiture or otherwise subject to destruction by another provision of this chapter. The showing of probable cause may be supported by evidence, prior judicial testimony, deposition, affidavit, or declaration. If the court determines that there is not probable cause to believe that the property is subject to forfeiture it shall order the property returned to the owner thereof unless the property is otherwise lawfully held.

(2) If a petition is filed pursuant to Section 11488.4 and there is an underlying or related criminal action and the defendant has not pled guilty or nolo contendre, a defendant who is a claimant alleging an interest in the property in the related forfeiture proceeding shall 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 Section 11470, or 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 property is subject to forfeiture. If the court determines that there is not probable cause to believe that the property is subject to forfeiture it shall order the property returned to the owner thereof unless the property is otherwise lawfully held.

(h) Within 30 days after a motion for return of property is granted pursuant to subdivision (g), the people may file a petition for writ of mandate or prohibition seeking appellate review of the order.

(i) Except as provided in subdivision (j) of Section 11488.4 and paragraph (1) of subdivision (b) of Section 11488.5, the state or local government entity shall have the burden of proving by a preponderance of the evidence that the property is subject to forfeiture as described in Section 11470.

A judgment of forfeiture does not require as a condition precedent thereto, that any defendant be convicted of an offense which made the property subject to forfeiture provided that the offense occurred within five years of the seizure of the property or within five years of the notification of intention to seek forfeiture. If there is a related criminal action, the issue of forfeiture may be tried in conjunction therewith by agreement of all parties. Trial shall be by jury unless waived by all parties. If there is no 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 one hundred thousand dollars ($100,000) in value. The Attorney General or district attorney shall provide notice of proceedings under this subdivision pursuant to subdivisions (c), excluding the provision relating to service of process regarding the petition, (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 superior court 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 and served, 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.

SEC. 4. Section 11488.5 of the Health and Safety Code, as amended by Section 11 of Chapter 1492 of the Statutes of 1988, 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 property was seized or, if there was no seizure, in which the property is located, a verified claim stating the nature of his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 10 days of the filing of the claim. The Judicial Council shall develop and approve official forms for the verified claim that is to be filed pursuant to this section. The official forms shall be drafted in nontechnical language and shall be made available through the office of the clerk of the appropriate court.

(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) 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 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.

(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. A claim shall not be admissible in the proceeding regarding the offense.

(2) The hearing shall be by jury, unless waived by consent of all parties.

(d) 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 a claimant who is concurrently a defendant in a

related criminal proceeding until the charge in that proceeding has been resolved in the trial court or the defendant fails to appear. 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 is subject to forfeiture pursuant to Section 11470, the court shall order the seized property released to the person it determines is entitled thereto.

(f) If the court or jury finds that the seized property was subject to forfeiture, and finds that a person claiming an interest therein knew or should have known of facts which made the property subject to forfeiture pursuant to Section 11470, the court shall order that the person's interest in the seized property be forfeited. If the court or jury does not make these findings, the court shall order that the person's interest in the property be returned. The state or local governmental entity shall have the burden of proving in accordance with the burden of proof set forth in subdivision (i) of Section 11488.4, that a person claiming an interest knew or should have known of facts which made the property subject to forfeiture pursuant to Section 11470.

(g) All seized property which was the subject of a 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. 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. A judgment entered pursuant to this section is not subject to Section 473 of the Code of Civil Procedure.

(h) 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.

SEC. 5. Section 11489 of the Health and Safety Code, as amended by Section 14 of Chapter 1492 of the Statutes of 1988, is amended to read:

11489. Notwithstanding Section 11502 and except as otherwise provided in Sections 11473, 11473.2, and 11473.3, 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, and any interest accrued thereon, shall be distributed by the state or local governmental entity as follows:

(a) To the bona fide or innocent purchaser or encumbrancer, 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 costs of notice required by Section 11488.4 and any necessary repairs, storage, or transportation of any property seized under this chapter.

(2) Ninety percent of the balance shall be distributed as follows:

(A) Eighty-five percent to the state or local or to the state and local law enforcement agencies that participated in the seizure, allocated between them to reflect the proportionate contribution of each agency.

(B) Fifteen percent to the prosecutorial agency which processes the forfeiture action.

(3) Ten percent of the balance for deposit in the Asset Forfeiture Distribution Fund, which is hereby created, and which shall be administered by the Office of Criminal Justice Planning.

(A) Notwithstanding Section 11340 of the Government Code, one million five hundred thousand dollars ($1,500,000) is hereby continuously appropriated each fiscal year, as adjusted annually by the state and local implicit price deflator, to the State Department of Mental Health for the purposes of Chapter 6 (commencing with Section 5475) of Part 1 of Division 5 of the Welfare and Institutions Code. This subparagraph shall be funded prior to funding subparagraph (B)

(B) After the obligation specified in subparagraph (A) is satisfied, moneys in the Asset Forfeiture Distribution Fund are available for appropriation in the annual Budget Act for the following purposes:

(i) One million dollars ($1,000,000), in 1989 and 1990 only, to the Los Angeles County Office of Education to fund grants and administer the Gang Risk Intervention Pilot Program as established pursuant to Assembly Bill 3723 of the 1987–88 Regular Session of the Legislature. This clause (i) shall be funded prior to funding clauses (ii) and (iii). This clause (i) shall remain operative only until January 1, 1991, and as of that date is inoperative.

(ii) An amount not to exceed 5 percent of the Asset Forfeiture Distribution Fund to cover administrative costs incurred by the Office of Criminal Justice Planning. Notwithstanding Section 16305.7 of the Government Code, any interest earned or other increment derived from investments made from moneys in the Assets Forfeiture Distribution Fund shall be deposited in the Asset Forfeiture Distribution Fund. This clause (ii) shall be funded prior to funding clause (iii).

(iii) The balance, if any, remaining shall be distributed, as follows:

(I) Eighty-five percent for deposit in the Peace Officers' Training Fund as set forth in Section 13520 of the Penal Code. State agencies shall be entitled to allocations out of the funds generated by this section, in the same manner as provided in Section 13523 of the Penal Code, for drug related training provided to full-time regularly-paid peace officers employed by the state, to the extent that there are funds in the Peace Officers' Training Fund generated by this section.

(II) Fifteen percent for financial assistance to provide for a statewide program of education, training, and research for local public prosecutors, which shall be administered by a private nonprofit organization composed of local prosecutors and which provides statewide education, training, and research.

(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 (3) 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 Offenders 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 pursuant to paragraph (3) 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. Funds so distributed shall be used by the law enforcement and prosecutorial agencies exclusively to support law enforcement and prosecutorial efforts of those agencies.

The court shall order the forfeiture proceeds distributed to the state, local, or state and local agencies as provided in this section.

All proceeds from forfeiture proceedings completed after January 1, 1989, shall be distributed in accordance with this section.

CHAPTER 1196

An act to amend Sections 1800.5, 1802, 1807, 1808, 1809, 1819, 1823, 1826, 12100, and 33100 of, to amend and renumber Sections 1800, 1803, 1803.5, 1804, and 1805 of, to add Sections 1800, 1800.4, 1800.7, 1800.9, 1801.1, 1803, 1804, 1805, 1805.5, 1810.5, 1814, 1815, and 1827 to, and to repeal and add Sections 1801 and 1803.5 of, the Financial Code, and to add Section 500 to the Penal Code, relating to money transmitters, and making an appropriation therefor.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 1800 of the Financial Code, is amended and renumbered to read:

1800.3. (a) No person shall engage in the business of receiving money for the purpose of transmitting the same or its equivalent to foreign countries without first obtaining a license from the superintendent.

(b) This chapter shall not apply to any of the following:

(1) A bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank which is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 or which is authorized under federal law to maintain a federal agency or federal branch office in this state.

(2) A trust company licensed pursuant to Section 401 or a national association authorized under federal law to engage in a trust banking business.

(3) An association or federal association, as defined in Section 5102 the deposits of which are insured by the Federal Savings and Loan Insurance Corporation or its successor.

(4) Any federally or state chartered credit union the member accounts of which are insured or guaranteed as provided in Section 14858.

(5) An industrial loan company or thrift and loan company, as defined in Section 18003, the investment certificates of which are insured by the Federal Deposit Insurance Corporation or its successor.

SEC. 2. Section 1800 is added to the Financial Code, to read:

1800. (a) It is the intent of the Legislature in enacting this chapter to protect the people of this state from being victimized by unscrupulous practices by persons receiving money for transmission to foreign countries and to establish a minimum level of fiscal responsibility and corporate integrity for all entities engaging in the business of receiving money for transmission to foreign countries without regard to the method of transmission.

(b) The Legislature finds and declares that California has a large and diverse population many of whom are concerned with the financial plight of people remaining in the countries which they left. Many of these people are not familar with the varied and intricate financial systems of this state and due to language barriers and other obstacles do not have access to entities offering legitimate money transmission services. In an effort to transmit money to their friends and relatives, these persons give their money to persons under the precept that the money or its equivalent will be immediately transmitted to the designated foreign country. The money is frequently misappropriated or never transmitted. The victims of

these practices are generally not aware of the law enforcement services available to help them, thus this unlawful conduct goes unreported.

SEC. 3. Section 1800.4 is added to the Financial Code, to read:

1800.4. (a) The receipt of money by an incorporated telegraph company, or its agents, for immediate transmission by telegraph to foreign countries shall be exempt from licensure under this chapter until July 1, 1990, provided each of the following conditions is satisfied.

(1) The company has applied before February 1, 1990, to the superintendent for licensure under this chapter.

(2) The company, and its agents, shall comply with and be subject to all applicable provisions of this chapter.

(3) The company directly, or through agents, on or before February 1, 1989, received money for immediate transmission by telegraph to foreign countries.

(b) The superintendent may extend the licensure exemption period provided in subdivision (a) once for up to 60 days for an applicant incorporated telegraph company in the event that the superintendent is unable to approve or deny the application before July 1, 1990, provided that the applicant incorporated telegraph company shall continue to comply with paragraphs (1) to (3), inclusive, of subdivision (a) during the extension period.

SEC. 4. Section 1800.5 of the Financial Code is amended to read:

1800.5. For the purposes of this chapter:

(a) (1) "Receiving money for transmission" means receiving money for the purpose of transmitting the same or its equivalent to foreign countries.

(2) Except as otherwise provided in paragraph (3), "receiving money for transmission" does not include selling any check, draft, money order, travelers check, or other instrument (whether or not negotiable) for the transmission or payment of money.

(3) "Receiving money for transmission" includes the sale by a person, either directly or indirectly through an agent, of any check or draft which.

(A) Is drawn by the person;

(B) Is drawn on, or is payable through or at, an office of a bank located in a foreign country;

(C) Is denominated in a foreign currency; and

(D) Is not designated on its face by the term "money order" or "travelers check" or by any substantially similar term.

(b) "Transmission money" means money received in this state by a licensee for transmission to a foreign country, or any equivalent into which the money is converted, from the time the money is received for transmission to a foreign country until the time the transmission of the money in accordance with the agreement of the licensee with the customer is completed, or, if the transmission is not completed, until such time as the money is repaid to the customer.

(c) "Agent" means any person whom a licensee has appointed as

its agent with authority to receive transmission money on behalf of the licensee, provided that the licensee becomes liable for the transmission of the transmission money at the time when the transmission money is received by the person. However, "agent" does not include any officer or employee of the licensee when acting as such at an office of a licensee.

(d) "Licensee" means any corporation licensed pursuant to this chapter.

(e) For the purposes of Section 1802.2, 1803.5, and 1804 the following terms shall have the following meanings:

(1) "Control" has the meaning set forth in Section 700.

(2) "Officer" has the meaning set forth in Section 33057.

SEC. 5. Section 1800.7 is added to the Financial Code, to read:

1800.7. (a) As used in this section, "designated person" means any agent, any applicant, the officers, directors, and controlling persons of any applicant or agent, and the directors and officers of the controlling persons of any applicant or agent.

(b) For the purposes of Sections 1802.2, 1803.5, and 1804, each of the following applies:

(1) The superintendent may, in the absence of the credible evidence to the contrary, presume that designated persons are each of good character and sound financial standing.

(2) The superintendent may find that a designated person is not of good character if that person has done any of the following:

(A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Consented to or suffered a judgment in any civil action based on conduct involving an act of fraud or dishonesty.

(C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Willfully made or caused to be made in any application or report filed with the superintendent or in any proceeding before the superintendent, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any application or report any material fact which was required to be stated therein.

(E) Willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(3) Paragraph (2) shall not be deemed to be an exclusive list of grounds upon which the superintendent may find that a designated person is not of good character.

SEC. 6. Section 1800.9 is added to the Financial Code, to read:

1800.9. The superintendent may impose on any authorization, approval, license, or order issued pursuant to this chapter any conditions that he or she deems reasonable or necessary to the public

interest.

SEC. 7. Section 1801 of the Financial Code is repealed.

SEC. 8. Section 1801 is added to the Financial Code, to read:

1801. (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 is five thousand dollars ($5,000).

(2) The fee for filing with the superintendent an application for authorization to appoint an agent is seventy-five dollars ($75). This paragraph shall become inoperative as of July 1, 1991.

(3) The fee for filing with the superintendent an application for approval to acquire control of a licensee is three thousand five hundred dollars ($3,500).

(4) The fee for filing with the superintendent an application for approval to establish a branch office of a licensee is two hundred fifty dollars ($250).

(5) The fee for filing with the superintendent an application for approval to establish a branch office of an agent is fifty dollars ($50).

(6) The fee for filing with the superintendent an application for extension of an approval to establish a branch office is one hundred dollars ($100).

(7) A licensee shall pay to the superintendent annually on or before July 1, a licensee fee of two thousand five hundred dollars ($2,500).

(8) A licensee shall pay to the superintendent annually on or before July 1, one hundred twenty-five dollars ($125) for each licensee branch office.

(9) A licensee shall pay to the superintendent annually on or before July 1, twenty-five dollars ($25) for each agent headquarter office and each agent branch office.

(10) Whenever the superintendent examines a licensee or any agent of a licensee, the licensee shall pay, within 10 days after receipt of a statement from the superintendent, a fee of four hundred dollars ($400) per day for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(b) (1) Each fee for filing an application with the superintendent shall be paid at the time the application is filed with the superintendent.

(2) No fee for filing an application with the superintendent shall be refundable, regardless of whether the application is approved, denied, or withdrawn.

(c) The superintendent shall, not later than January 1, 1991, submit recommendations to the Legislature for the collection after July 1, 1991, of moneys in an amount that may be necessary to replace fees authorized by paragraph (2) of subdivision (a).

SEC. 9. Section 1801.1 is added to the Financial Code, to read:

1801.1. Each fiscal year the superintendent shall levy an assessment on a pro rata basis on those licensees which at any time

during the preceeding calendar year received transmission money. The total assessment levied on all of those licensees shall be in an amount which, when added to the fees that the superintendent collects during the fiscal year the assessment is levied, is sufficient to meet the expenses of the superintendent in administering this chapter and to provide a reasonable reserve for contingencies. The basis of the apportionment of the assessment among the licensees assessed shall be the proportion that the amount of transmission money received by the licensee bears to the total amount of transmission money received by all licensees as shown by the reports of licensees to the superintendent for the preceding calendar year, as required by Section 1807. The assessment rate shall be fixed from time to time by the superintendent but shall not exceed one dollar ($1) per one thousand dollars ($1,000) of transmission money received by the licensee.

The superintendent shall notify each licensee by mail of the amount levied against it. The licensee shall pay the amount levied within 20 days. If payment is not made to the superintendent within that time, the superintendent 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.

This section shall not become operative until July 1, 1990.

SEC. 10. Section 1802 of the Financial Code is amended to read:

1802. (a) An application for a license shall be in writing, under oath, and in a form prescribed by the Superintendent of Banks. It shall contain the name and address of the applicant, and of every officer and director thereof. The application shall also contain any other information the superintendent may require.

(b) No person other than a corporation may apply for or be issued a license.

(c) Notwithstanding Section 1819, all licenses issued prior to January 1, 1985, to noncorporate persons shall be automatically revoked on June 30, 1985. Until June 30, 1985, the fee for filing an application for a license shall be waived if a person which controls the applicant is a noncorporate person which held a license on December 31, 1984.

SEC. 11. Section 1803 of the Financial Code is amended and renumbered to read:

1802.2. If the superintendent finds, with respect to an application for a license:

(a) That the applicant has adequate capital as specified in Section 1814 to engage in the business of receiving money for transmission and that the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of receiving money.

(b) That the applicant, the directors, and officers of, and any person which controls the applicant, and the directors and officers of any person which controls the applicant, are of good character and sound financial standing.

(c) That the applicant is competent to engage in the business of receiving money for transmission.

(d) That the applicant's plan for engaging in the business of receiving money for transmission affords reasonable promise of successful operation.

(e) That it is reasonable to believe that the applicant, if licensed, will engage in the business of receiving money for transmission and will comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter, the superintendent shall approve the application. If, after notice and a hearing, the superintendent finds otherwise, the superintendent shall deny the application.

SEC. 12. Section 1803 is added to the Financial Code, to read:

1803. No licensee shall appoint or continue any person as an agent, unless the licensee and the person have made a written contract which contains each of the following provisions:

(a) That the licensee appoints the person as its agent with authority to receive transmission money on behalf of the licensee.

(b) That the person make and keep accounts, correspondence, memorandums, papers, books, and other records as the superintendent by regulation or order requires and preserve the records for the time specified by the regulation or order.

(c) That all funds, less fees due agents provided for and expressly set forth, received by the person from the receipt of transmission money on behalf of the licensee shall be trust funds owned by and belonging to the person from whom they were received until the time that directions have been given by the licensee or its agents for payment abroad of the remittance and funds provided for the payment

(d) Any other provisions that the superintendent may find to be necessary to carry out the provisions and purposes of this chapter.

(e) This section shall not apply to any written contract between a licensee and an agent appointed by the licensee prior to February 1, 1989, unless the superintendent, in his or her sole discretion, determines that compliance with this section is necessary and appropriate. For purpose of this subdivision only, "licensee" means an incorporated telegraph company which existed on February 1, 1989 or any wholly owned incorporated subsidiary of that telegraph company.

SEC. 13. Section 1803.5, as added by Chapter 1570 of the Statutes of 1982, is repealed.

SEC. 14. Section 1803.5 of the Financial Code, as added by Chapter 431 of the Statutes of 1988, is amended and renumbered to read:

1802.8. (a) Before any applicant is issued a license the applicant shall file with the superintendent, in the form required by the superintendent, an irrevocable consent appointing the superintendent to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the

person, that person's successor, executor, or administrator, which arises under this chapter or any regulation or order issued under this chapter after the consent has been filed.

(b) Service of process after consents have been filed pursuant to this section shall have the same force and validity as if personally served on the person.

(c) Service may be made by leaving a copy of the process at any office of the superintendent, but the service is not effective unless (1) the party making the service, who may be the superintendent, immediately sends notice of the 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 (2) 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 any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(d) Any consent filed pursuant to this section shall be deemed to have appointed the superintendent and any successor from time-to-time in office.

SEC. 15. Section 1803.5 is added to the Financial Code, to read:

1803.5. (a) Except as provided in subdivision (b), no person shall act as an agent of a licensee, or act in any other similar capacity, and no licensee shall appoint another person to act as an agent, or to act in any other similar capacity, for the receipt of transmission money on behalf of that licensee without first obtaining the authorization of the superintendent

(b) (1) Any person appointed as an agent by a licensee before February 1, 1989, may continue to act as an agent for that licensee, without the original appointment having been authorized by the superintendent as provided in this section. However, the licensee shall notify the superintendent by March 31, 1990, of all agents appointed by the licensee prior to February 1, 1989. The superintendent may thereafter issue an order revoking or suspending any agent appointed prior to February 1, 1989, as provided by this section. With respect to any person appointed as an agent by a licensee on or after February 1, 1989, and before January 1, 1990, the licensee shall comply with the requirements for approval set forth in this section on or before March 31, 1990. However, the application fee otherwise required for the application shall be waived. This limited category of agents may continue to serve as an agent of the licensee for 45 days after filing the application with the superintendent but in no event beyond May 15, 1990, without approval of the application by the superintendent under subdivision (d).

(2) Any incorporated telegraph company which had more than 1,000 agents on February 1, 1989, or a wholly owned subsidiary of that telegraph company, either of which applies for licensure under this chapter, shall notify the superintendent at the time of application, or, if the application was filed prior to January 1, 1990, shall notify the

superintendent not later than February 1, 1990, of any agent who has been an agent with that company continuously for at least five years prior to February 1, 1989. Any agent that has been with that telegraph company continuously for at least five years prior to February 1, 1989, may, from the time the license is issued by the superintendent, continue to act as an agent for that company without the original appointment having been authorized by the superintendent as provided in this section. The superintendent may thereafter issue an order revoking or suspending any agent appointed by that company who has been an agent with the company continuously for at least five years prior to February 1, 1989, as provided by this section.

(c) An application for the appointment of an agent shall be submitted by a licensee for each proposed agent, shall be in writing, under oath, and in a form prescribed by the superintendent. The application shall contain that information which the superintendent may require.

(d) If the application for the appointment of an agent is not approved or denied within 45 days after the application is filed with the superintendent, the application shall be deemed to be approved by the superintendent as of the first day after the 45-day period.

For purposes of this subdivision, an application for the appointment of an agent is deemed to be filed with the superintendent at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the superintendent, is received by the superintendent.

The superintendent may disapprove the application for the appointment of an agent by a licensee if the superintendent finds any of the following:

(1) That the operations and financial condition of the licensee indicate that the licensee is not competent to appoint the proposed agent to receive transmission money and to supervise the proposed agent.

(2) That the proposed agent, any person who controls the proposed agent, and any director or officer of the proposed agent or of any person who controls the proposed agent, if any, are not of good character or of sound financial standing.

(3) That the proposed agent is not competent to engage in the business of receiving money for transmission.

(4) That it is reasonable to believe that the proposed agent, if it becomes an agent of a licensee, will not comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

(e) An agent of a licensee shall not appoint a subagent to receive transmission money.

(f) Each licensee shall be liable as a principal for the transmission of the transmission money at the time when the transmission money is received by the agent.

(g) The superintendent may issue an order revoking or suspending any authorization issued pursuant to this section or revoking authority to continue any agent appointed prior to February 1, 1989, if, after a hearing, the superintendent finds any of the following:

(1) The agent has violated this chapter or any regulation adopted by the superintendent under this chapter.

(2) Any fact or condition exists which would be grounds for denying an application for authorization under subdivision (d).

(3) The agent is conducting its business in an unsafe manner.

(h) (1) If the superintendent finds that any of the factors set forth in subdivision (g) is true with respect to any agent and that it is necessary for the protection of the public interest that the superintendent immediately suspend or revoke the authorization issued pursuant to this section, the superintendent may issue an order suspending or revoking the authorization issued pursuant to this section.

(2) Within 30 days after an order is issued pursuant to paragraph (1), any licensee to whom the order is issued or any agent or former agent with respect to whom the order was issued may file with the superintendent an application for a hearing on the order. If the superintendent fails to commence a hearing within 15 business days after the application is filed with the superintendent, (or within a longer period of time agreed to by a licensee, agent, or former agent) 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. The right of any licensee to which an order has been issued under paragraph (1) or of the agent or former agent with respect to whom the order was issued to petition for judicial review of the order shall not be affected by the failure of the licensee, or the agent or former agent to apply to the superintendent for a hearing on the order pursuant to this paragraph.

(i) Section 1805 shall apply to the establishment of a branch office in this state by an agent of a licensee and Section 1805.5 shall apply to the relocation of a branch office in this state by an agent of a licensee.

SEC. 16. Section 1804 of the Financial Code is amended and renumbered to read:

1802.7. If the application is approved by the superintendent he or she shall, upon the payment of the license fees, issue and deliver to the applicant a license to engage in business in accordance with this chapter.

SEC 17. Section 1804 is added to the Financial Code, to read:

1804. (a) No person shall, directly or indirectly, acquire control of a licensee unless the superintendent has first approved in writing of the acquisition of control. An application to acquire control of a licensee shall be in writing, under oath, and in a form prescribed by the superintendent. The application shall contain that information

which the superintendent may require.

(b) The superintendent shall not approve the application unless the superintendent finds, all of the following:

(1) The applicant and the officers and directors of the applicant are of good character and sound financial standing.

(2) The applicant is competent to engage in the business of receiving money for transmission.

(3) It is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with all applicable provisions of this chapter and any regulation or order issued under this chapter.

(4) The applicant's plans, if any, to make any major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee.

(c) For the purposes of subdivision (b), the superintendent may find an applicant's plan to make major changes in the management of a licensee is detrimental to the licensee if the plan provides for a person who is not of good character to become a director or officer of the licensee.

The grounds specified in this subdivision shall not be deemed to be the only grounds upon which the superintendent may find, for the purposes of subdivision (b), that an applicant's plan to make a major change in the management of a licensee is detrimental to the licensee.

(d) If it appears to the superintendent that any person is violating or failing to comply with this section, the superintendent may direct the person to comply with this section by an order issued over the superintendent's official seal.

(e) Whenever it appears to the superintendent that any person has committed or is about to commit a violation of any provision of this section or of any regulation or order of the superintendent issued pursuant to this section, the superintendent may apply to the superior court for an order enjoining the person from violating or continuing to violate this section or that regulation or order, and for other equitable relief as the nature of the case or interests of the licensee, the controlling person, the creditors or shareholders of the licensee or controlling person or the public may require.

(f) The superintendent, may, for good cause, amend, alter, suspend, or revoke any approval of a proposal to acquire control of a licensee issued pursuant to this section.

(g) There shall be exempted from the provisions of this section any transaction which the superintendent by regulation or order exempts as not being comprehended within the purposes of this section and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of a licensee or the customers of a licensee.

SEC. 18. Section 1805 of the Financial Code is amended and renumbered to read:

1802.6. The license is not transferable or assignable.

SEC. 19. Section 1805 is added to the Financial Code, to read:

1805. (a) For the purposes of this section "branch office" means any office in this state, other than the headquarters office of a licensee or agent, at which the licensee receives money for transmission to a foreign country, either directly or through an agent.

(b) A licensee shall not establish a branch office without first obtaining the approval of the superintendent.

(c) An application to establish and operate a branch office shall be in writing and in a form prescribed by the superintendent. The application shall contain that information which the superintendent may require.

(d) The superintendent shall deny an application to establish and operate a branch office where the operations or financial condition of the licensee or of the agent are not satisfactory.

(e) In case an application to establish and operate a branch office is not denied or approved by the superintendent within 60 days after the application is filed with the superintendent, or, if the superintendent extends the period within which the superintendent may act, within the extended period, the application shall be deemed to be approved by the superintendent as of the first day after the 60-day period or the extended period, as the case may be.

For purposes of this subdivision, an application to establish and operate a branch office shall be deemed to be filed with the superintendent at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the superintendent, is received by the superintendent.

(f) The approval of an application for authority to establish and operate a branch office shall be revoked by operation of law with respect to any branch office which the applicant does not establish and operate, as the case may be, within one year after the date of approval by the superintendent. However, for good cause on written application made before the approval is revoked, the superintendent may extend the approval for additional periods not in excess of one year.

(g) Not less than 60 days prior to discontinuing the operation of a branch office, a licensee shall provide the superintendent and the public with written notice of the discontinuance in the manner the superintendent directs. This subdivision does not apply to the discontinuance of a branch office of an agent if the discontinuance of the branch office results from termination of the agency relationship.

SEC. 20. Section 1805.5 is added to the Financial Code, to read:

1805.5. A licensee shall not change the location of a branch office without notifying the superintendent and the public in the manner as the superintendent directs at least 60 days before the date of the proposed relocation. For purposes of this section, "branch office" has the meaning specified in subdivision (a) of Section 1805.

SEC. 21. Section 1807 of the Financial Code is amended to read:

1807. (a) Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the superintendent may, by regulation or order specify, file with the superintendent a report containing all of the following:

(1) Financial statements (including balance sheet, income statement, statement of changes in shareholders' equity, and statement of changes in financial position) for, or as of the end of, that fiscal year, verified by two of the licensee's principal officers. The verification shall state that each of the officers making it has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state. For the purposes of this paragraph, a branch office has the meaning set forth in subdivision (a) of Section 1805.

(3) The name and business address of each person which acted as an agent of the licensee during the last quarter of that fiscal year in this state, and if the person is no longer an agent of the licensee, the date on which the relationship terminated.

(4) Such other information as the superintendent may, by regulation or order, require.

(b) Each licensee shall, not more than 45 days after the end of each quarter (except the fourth quarter of its fiscal year), or within such longer period as the superintendent may by regulation or order specify, file with the superintendent a report containing all of the following:

(1) Financial statements (including balance sheet, income statement, statement of changes in shareholders' equity, and statement of changes in financial position) for, or as of the end of, that fiscal quarter, verified by two of the licensee's principal officers, in the manner described in paragraph (1) of subdivision (a) of this section.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state.

(3) The name and business address of each person which acted as an agent of the licensee during the quarter in this state, and if such person is no longer an agent of the licensee, the date on which such relationship terminated.

(4) Such other information as the superintendent may by regulation or order require.

(c) Each licensee shall file with the superintendent such other reports as and when the superintendent may by regulation or order require.

SEC. 22. Section 1808 of the Financial Code is amended to read:

1808 (a) The superintendent may at any time and from time to time examine the business of any licensee or any agent of a licensee in order to ascertain whether that business is being conducted in a

lawful manner and whether all moneys received for transmission are properly accounted for.

(b) The directors, officers, and employees of a licensee or agent of a licensee being examined by the superintendent shall exhibit to the superintendent, on request, any or all of the licensee's accounts, books, correspondence, memoranda, papers, and other records and shall otherwise facilitate the examination so far as it may be in their power to do so.

SEC. 23. Section 1809 of the Financial Code is amended to read:

1809. (a) Each licensee shall file with the superintendent a certified copy of every receipt form used by it or by its agents for money received for transmission. No licensee or its agents shall use any receipt, a certified copy of which has not first been filed with and approved by the superintendent.

(b) If a receipt is required by this chapter to be in English and another language, the English version of the receipt shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the licensee or its agent and the licensee or its agent shall be liable for any damages caused by these discrepancies.

(c) Any licensee violating the requirements of this section shall be subject to a fine of fifty dollars ($50) for each violation.

(d) If any licensee or its agent uses a receipt form, a certified copy of which has not first been filed with and approved by the superintendent, the licensee shall be liable for the acts of its agents whether or not the licensee authorized the agent to use that form.

SEC. 24. Section 1810.5 is added to the Financial Code, to read:

1810.5. (a) Every licensee or its agent shall refund to the customer within 10 days of receipt of the customer's written request for a refund any and all moneys received for transmission to a foreign country unless any of the following occurs:

(1) The funds have been forwarded within 10 days of the date of receipt.

(2) Instructions have been given committing an equivalent amount of money to the person designated by the customer within 10 days of the date of the receipt of the funds from the customer.

(3) The customer instructs the licensee to transmit the moneys at a time beyond 10 days. If the customer gives instructions as to when the moneys shall be forwarded or transmitted and the moneys have not yet been forwarded or transmitted, the licensee or its agent shall refund the customer's money within 10 days of receipt of the customer's written request for a refund.

(b) A receipt shall be provided by a licensee or its agent to a customer which shall be made available to the customer in English and in the language principally used by that licensee or that agent to advertise, solicit, or negotiate, either orally or in writing, at that office if other than English. The receipt shall either include or have

attached a conspicuous statement in English and in the language principally used by the licensee or that agent to advertise, solicit, or negotiate, either orally or in writing at that office if other than English in a size equal to at least 10-point bold type, as follows:

RIGHT TO REFUND

"You, the customer, are entitled to a refund of the money to be transmitted as the result of this agreement if _____ (name of licensee or its agent) does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the moneys shall be forwarded or transmitted are not complied with and the money has not yet been forwarded or transmitted you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to _____ (name of licensee or its agent) at _____ (mailing address of licensee or its agent). If you do not receive your refund, you may be entitled to your money back plus a penalty of up to $1,000 and attorney's fees pursuant to Section 1810.5 of the California Financial Code."

(c) A cause of action under this section may be brought in small claims court if it does not exceed the jurisdiction of that court, or in any other appropriate court. The customer shall be entitled to recover each of the following:

(1) Any and all moneys received for transmission to a foreign county, plus any fees and charges paid by the customer.

(2) A penalty in an amount not to exceed one thousand dollars ($1,000).

The court shall award the prevailing party costs and attorney's fees.

SEC. 25. Section 1814 is added to the Financial Code, to read:

1814. (a) Except as provided by subdivision (c), each licensee shall at all times maintain tangible shareholders' equity determined to be adequate by the superintendent of at least two hundred fifty thousand dollars ($250,000).

(b) "Tangible shareholders' equity" means shareholders' equity minus intangible assets as determined in accordance with generally accepted accounting principles.

(c) All licensees licensed pursuant to this chapter before January 1, 1990, are not subject to this section until January 1, 1991.

SEC. 26. Section 1815 is added to the Financial Code, to read:

1815. (a) The receipt presented to each customer for each transaction pursuant to subdivision (b) of Section 1810.5 shall clearly

state the rate of exchange for the particular transaction, the amount of commission or fees, and the net exchange after all fees and commissions have been deducted. The receipt shall also state the total amount of currency presented by the customer and the total amount to be delivered to the beneficiary designated by the customer. These disclosures shall be in English and in the same language as that principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, at that office if other than English.

(b) All window and exterior signs concerning the rates of exchange shall clearly state in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, at that office if other than English, the rate of exchange for exchanging the currency of the United States for foreign currency. All interior signs and all advertising, if rates are quoted, shall clearly state the rates of exchange for exchanging the currency of the United States for foreign currency and shall state all commissions and fees charged on all transactions.

(c) At each office of each licensee and each agent, there shall be disclosed in those offices in this state the information specified in subdivision (b) in English and in the same language principally used by the licensee or any agent of the licensee to advertise, solicit, or negotiate, either orally or in writing, with respect to receiving money or its equivalent for transmission to a foreign country at that office.

(d) If the customer does not specify at the time the currency is presented to the licensee or its agent the country to which the currency is to be transmitted, the rate of exchange for the transaction is not required to be set forth on the receipt.

SEC. 27. Section 1819 of the Financial Code is amended to read:

1819. The superintendent may revoke or suspend any license issued pursuant to this article, if, after a hearing, he or she finds any of the following.

(a) The licensee has violated any provision of this chapter or any rule or regulation adopted by the superintendent.

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, would be grounds for denying an application for a license under Section 1802.2.

(c) The licensee is conducting its business in an unsafe manner.

(d) The licensee has failed to obey a final order issued by the superintendent.

SEC. 28. Section 1823 of the Financial Code is amended to read:

1823. Every person who violates or fails to comply with this chapter, or who, without complying with this chapter, represents that he or she is authorized to receive, or who solicits or receives, money or the equivalent for transmission to a foreign country, shall upon conviction be fined not more than fifty thousand dollars ($50,000) or shall be imprisoned in the state prison, or in a county jail

for not more than one year, or be punished by both the fine and imprisonment.

SEC. 29. Section 1826 of the Financial Code is amended to read:

1826. Any person who violates this chapter shall be liable to the people of the State of California in an action brought by the superintendent for a civil penalty not to 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 or part thereof during which the violation continues.

SEC. 30. Section 1827 is added to the Financial Code to read:

1827. (a) No agent of a licensee who has actual notice that the superintendent has suspended or revoked the license of a licensee or that the superintendent has issued an order taking possession of the property and business of the licensee, shall receive any transmission money on behalf of the licensee.

(b) If any agent of a licensee, after first having actual notice that the superintendent has suspended or revoked the license of a licensee or that the superintendent has issued an order taking possession of the property and business of the licensee, receives any transmission money on behalf of the licensee, the agent shall be jointly and severally liable with the licensee for the timely and proper delivery of transmission money received by the agent of the licensee.

SEC. 31. Section 12100 of the Financial Code is amended to read:

12100. This division does not apply to any of the following:

(a) Persons or their authorized agents doing business under license and authority of the Superintendent of Banks of the State of California, or under any law of this state or of the United States relating to banks, trust companies, building or savings and loan associations, industrial loan companies, personal property brokers, credit unions, title insurance companies or underwritten title companies (as defined in Section 12402 of the Insurance Code), escrow agents subject to Division 6 (commencing with Section 17000), consumer finance lenders subject to Division 10 (commencing with Section 24000), or commercial finance lenders subject to Division 11 (commencing with Section 26000).

(b) (1) Any person which is licensed under Chapter 14A (commencing with Section 1851) of Division 1 or any agent of such person when selling any travelers check (as defined in Section 1852) which is issued by such person.

(2) Any person which is licensed under Division 16 (commencing with Section 33000) or any agent of the person, when selling any payment instrument (as defined in Section 33059) which is issued by the person.

(c) The services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an attorney at law, and the fees and disbursements of such person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this

chapter; provided, these fees and disbursements shall not be shared, directly or indirectly with the prorater or check seller.

(d) Any transaction in which money or other property is paid to a "joint control agent" for disbursal or use in payment of the cost of labor, materials, services, permits, fees, or other items of expense incurred in construction of improvements upon real property.

(e) A merchant-owned credit or creditors association, or a member-owned or member-controlled or member-directed association whose principal function is that of servicing the community as a reporting agency.

(f) Any person licensed under Chapter 1 of Part 6 of Division 2 of the Labor Code, when acting in any capacity for which he or she is licensed under such part.

(g) Any person licensed under Part 1, Division 4, of the Business and Professions Code, when acting in any capacity for which he or she is licensed under that part.

(h) A common law or statutory assignment for the benefit of creditors or the operation or liquidation of property or a business enterprise under supervision of a creditor's committee.

(i) The services of a person licensed as a certified public accountant or a public accountant in this state, when the person renders services in a course of his or her practice as a certified public accountant or a public accountant, and the fees and disbursements of the person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly, with the prorater or check seller.

(j) Nonprofit community service organizations that are subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or are subject to the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) and whose membership consists exclusively of retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employers' or employees' organizations, and related groups, if the principal functions of these organizations are: (1) consumer credit education; (2) counseling on consumer credit problems and family budgets; and (3) arranging, and in certain cases administering, debt settlement plans, for which a charge for administrative services only may be made of 6.5 percent of the money disbursed monthly, or twenty dollars ($20) per month, whichever is the lesser, to offset expenses; provided essential records are kept in accordance with sound accounting practices, consumer funds are banked in a trust account and appropriate fidelity bond and insurance are maintained, that reports are made to debtors, and independent audits made; and further provided, however, that this subdivision shall exempt these organizations from this division only with respect to those activities described in Section 12002.1 and not

with respect to those activities described in Section 12002.

(k) Any person licensed under Chapter 14 (commencing with Section 1800) of Division 1 or any agent of such person, when selling any check or draft which is drawn by the person and which is of the type described in paragraph (3) of subdivision (a) of Section 1800.5.

(*l*) Any group of banks each of which is organized under the laws of a nation other than the United States and one or more of which are licensed by the Superintendent of Banks of the State of California under Article 1 (commencing with Section 1750) of Chapter 14, of Division 1, or any agent of such group, when selling any foreign currency travelers check (as defined in Section 1852) issued by such group, provided that each bank which is a member of the group is jointly and severally liable to pay such foreign currency travelers check.

(m) Any transaction of the type described in Section 1854.1.

SEC. 32. Section 33100 of the Financial Code is amended to read:

33100. The following persons and transactions are exempted from this division:

(a) (1) Any insured bank, when selling any payment instrument issued by it.

(2) Any bank organized under the laws of a nation other than the United States which is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 or which is authorized under federal law to maintain a federal agency or federal branch in this state, when selling any foreign currency payment instrument which is issued by such bank and which is not designated on its face by the term "money order" or "travelers check" or by any substantially similar term.

(3) Any insured savings and loan association, when selling any payment instrument issued by it.

(4) Any federal or state-licensed credit union, when selling any payment instrument issued by it.

(5) Any person licensed under Chapter 14 (commencing with Section 1800) of Division 1, when selling any check or draft which is drawn by the person and which is of the type described in paragraph (3) of subdivision (a) of Section 1800.5.

(6) Any person licensed as a check seller under Division 3 (commencing with Section 12000), when selling any payment instrument issued by it.

(7) The United States or any agency of the United States, including the United States Postal Service, any Federal Reserve bank, and any federal home loan bank, when selling any payment instrument issued by it.

(b) Any California agent of any person referred to in subdivision (a) when selling any payment instrument which is issued by such person and which such person is permitted to sell under the paragraph of subdivision (a) applicable to such person.

SEC. 33. Section 500 is added to the Penal Code, to read:

500. (a) Any person who receives money for the actual or

purported purpose of transmitting the same or its equivalent to foreign countries as specified in Section 1800.5 of the Financial Code who fails to do at least one of the following acts unless otherwise instructed by the customer is guilty of a misdemeanor or felony as set forth in subdivision (b):

(1) Forward the money as represented to the customer within 10 days of receipt of the funds.

(2) Give instructions within 10 days of receipt of the customer's funds, committing equivalent funds to the person designated by the customer.

(3) Refund to the customer any money not forwarded as represented within 10 days of the customer's written request for a refund pursuant to subdivision (a) of Section 1810.5 of the Financial Code.

(b) (1) If the total value of the funds received from the customer is less than four hundred dollars ($400), the offense set forth in subdivision (a) 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 imprisonment and fine.

(2) If the total value of the money received from the customer is four hundred dollars ($400) or more, or if the total value of all moneys received by the person from different customers is four hundred dollars ($400), or more and the receipts were part of a common scheme or plan, the offense set forth in subdivision (a) is punishable by imprisonment in the state prison for 16 months, 2, or 3 years, by a fine not exceeding ten thousand dollars ($10,000), or by both imprisonment and fine.

SEC. 34. There is hereby appropriated from the State Banking Fund to the State Banking Department one hundred forty-one thousand dollars ($141,000) for expenses and 6.0 personnel years for the additional supervision and enforcement duties required by this act.

SEC. 35. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1197

An act to add Section 14137.6 to the Welfare and Institutions Code, relating to AIDS.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. (a) The Legislature finds and declares that there has been a significant increase in the survival of persons with human immunodeficiency virus (HIV) infection as a result of earlier diagnosis and newly available drug treatments. In the period of 1981 to 1985, the average survival rate was 11 months for persons with acquired immune deficiency syndrome (AIDS). In 1988, this has increased to 16 to 18 months. This survival time is projected to continue to increase due to early interventions and use of therapeutic drugs on both an inpatient and outpatient basis.

(b) It is the intent of the Legislature to improve access to promising drug treatments for people with HIV infection. Unfortunately, the drug approval process is generally slow and cumbersome. An individual's survival may hinge on his or her ability to get access to drugs having treatment Investigational New Drug status, but the current Medi-Cal policy for medically necessary services may be subject to varying interpretations of the appropriate use of a drug not yet licensed by the federal Food and Drug Administration, resulting in the denial of payment under the Medi-Cal program.

(c) It is the intent of the Legislature to allow HIV-positive Medi-Cal beneficiaries, like other health care recipients, to have the right to receive any approved drug having treatment Investigational New Drug status which their physician prescribes to them, and to have that care necessary for administering the drug paid for by Medi-Cal.

SEC. 2. Section 14137.6 is added to the Welfare and Institutions Code, to read:

14137.6. (a) Notwithstanding any other provision of law, and subject to federal financial participation, covered services under this chapter shall include, subject to utilization controls, medically necessary inpatient and outpatient services associated with the administration of any drug that has been classified by the department or the Food and Drug Administration as having treatment Investigational New Drug (IND) status, when the drug is being administered for the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), or human immunodeficiency virus (HIV), to otherwise eligible persons.

(b) The department shall adopt emergency regulations pursuant

to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this section. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department in order to implement this section shall not be subject to the review and approval of the Office of Administrative Law. These regulations shall become effective immediately upon filing with the Secretary of State.

(c) No part of this section shall be construed to require the department to pay for the cost of treatment IND drugs provided for research purposes by pharmaceutical companies or any other sponsors at no cost.

(d) Payment for care to any Medi-Cal eligible HIV infected person in need of treatment shall not be denied solely on the basis of the use of a drug having treatment IND status.

(e) When medically feasible, every effort shall be made to administer drugs having treatment IND status on an outpatient basis.

CHAPTER 1198

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

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The State Department of Health Services shall report to the policy and fiscal committees of the Legislature on the costs, savings, and administrative structure that would be necessary to implement a common eligibility procedure and uniform eligibility standard for departmental programs that deliver services to pregnant women, women with infants and young children, and programs for children and adolescents by November 1, 1990. The report shall include programs which currently provide nutritional supplements, health screenings and examinations, health treatments, immunizations, health education, and other services which the department deems appropriate. The report shall evaluate the feasibility of implementing a uniform computerized eligibility system which is based on a standardized client application form for all affected programs.

SEC. 2. The report shall include:

(a) A description of federal statutes, regulations, and guidelines relating to the programs described in Section 1 concerning eligibility, and options available for exemption from these

requirements as necessary.

(b) A description of state statutes and regulations requiring amendment in order to develop a single, uniform eligibility standard and determination procedure.

(c) Changes in administrative structures at the state and local level that could improve the coordination of the delivery of services for women, infants, children and adolescents.

SEC. 3. The sum of one hundred fifty-five thousand dollars ($155,000) or so much thereof as may be necessary is hereby appropriated from funds available in Item 4260-111-001 of the Budget Act of 1989 for the purposes of this act.

CHAPTER 1199

An act to amend Sections 1010, 1012, 1015, 1017, and 1019 of, and to add Sections 26508 and 26509 to, the Health and Safety Code, relating to health.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 1010 of the Health and Safety Code is amended to read:

1010. (a) The state department may accredit laboratories which perform for regulatory purposes analyses of food, drinking water, waste water, hazardous wastes, and contaminated soils or sediments, or any combination of these, through the issuance of certificates of accreditation. Laboratory activities regulated under Section 12591 of the Food and Agricultural Code shall be exempt from accreditation until January 1, 1992.

(b) In any arrangement between laboratories, which involves the transfer of samples or portions of samples, the analyzing laboratory shall be identified in all sample reports and shall be the laboratory for purposes of accreditation.

(c) For the purposes of this chapter:

(1) "Certificate" means a certificate of accreditation issued under this chapter.

(2) "Laboratory" means any facility or vehicle which is owned by a person or persons, or by a public or private entity, and which is equipped and operated to carry out environmental analyses or pesticide residue analysis on food, as determined by the department.

(3) "Pesticide" means any substance which alone, in chemical combination, or in any formulation with one or more substances, is an "economic poison" within the meaning of Section 12753 of the Food and Agricultural Code or a "pesticide" as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec.

136 et seq.).

SEC. 2. Section 1012 of the Health and Safety Code is amended to read:

1012. (a) The department by regulation may establish minimum standards for the following:

(1) Quality assurance programs in effect at the laboratory.

(2) Laboratory facilities.

(3) Methods.

(4) Equipment.

(5) Qualifications of laboratory directors and other laboratory personnel.

(6) Any other area concerning the operation or maintenance of a laboratory not inconsistent with this chapter as may be necessary to carry out the provisions of this chapter.

(b) The regulations governing the minimum standards for accreditation of laboratories that perform analysis of food shall be adopted, in cooperation with the Department of Food and Agriculture, as they relate to the testing of raw agricultural commodities or dairy products.

SEC. 3. Section 1015 of the Health and Safety Code is amended to read:

1015. (a) Upon the filing of an application for accreditation and after a finding by the department that the applicant is in full compliance with the provisions of this chapter and rules and regulations adopted under this chapter, the department shall issue to the applicant a certificate in the fields of testing identified in Section 1017.

(b) The department shall deny accreditation, or revoke a certificate of accreditation if it finds one of the following:

(1) The laboratory fails to report acceptable results in the analysis of performance evaluation samples.

(2) The laboratory fails to pass an onsite inspection.

(3) The laboratory is not in compliance with any other provision of this chapter or regulations adopted under this chapter.

(c) Provided that the applicant complies with all other provisions of this chapter, accreditation may be restricted to the fields of testing of Section 1017 or subgroups thereof as defined by regulation for which acceptable results have been produced and onsite inspection was passed.

(d) Upon the filing of a complete application for accreditation pursuant to subdivision (a), the department may issue a certificate of interim accreditation to the applicant pending the completion of onsite inspection and an analysis of performance evaluation samples. An interim accreditation shall be nonrenewable and shall remain in effect until accreditation is either granted under subdivision (a) or denied under subdivision (b), but not later than one year after the date of issuance of the interim accreditation.

SEC. 4. Section 1017 of the Health and Safety Code is amended to read:

1017. (a) At the time of application and annually thereafter, any private entity or public entity shall pay a nonrefundable annual accreditation fee. The fee shall consist of a basic fee of eight hundred seventy-nine dollars ($879) and an additional fee of three hundred ninety-six dollars ($396) for accreditation in each of the following fields of testing for which accreditation is sought: (1) microbiology of drinking water and waste water, (2) inorganic chemistry and physical properties of drinking water excluding toxic chemical elements, (3) analysis of toxic chemical elements in drinking water, (4) organic chemistry of drinking water (measurement by gc/ms combination), (5) organic chemistry of drinking water (excluding measurements by gc/ms combination), (6) radiochemistry, (7) shellfish sanitation, (8) aquatic toxicity bioassays, (9) physical properties testing of hazardous waste, (10) inorganic chemistry and toxic chemical elements of hazardous waste, (11) extraction tests of hazardous waste, (12) organic chemistry of hazardous waste (measurement by gc/ms combination), (13) organic chemistry of hazardous waste (excluding measurements by gc/ms combination), (14) bulk asbestos analysis, (15) substances regulated under the California Safe Drinking Water and Toxic Enforcement Act and not included in other listed groups, (16) waste water inorganic chemistry, nutrients, and demand, (17) toxic chemical elements in waste water, (18) organic chemistry of waste water (measurements by gc/ms combination), (19) organic chemistry of waste water (excluding measurements by gc/ms combination), (20) inorganic chemistry and toxic chemical elements of pesticide residues in food, (21) organic chemistry of pesticide residues in food (measurement by gc/ms combination), (22) organic chemistry of pesticide residues in food, (excluding measurement by gc/ms combination), (23) operation of a mobile laboratory in any one of the above fields of testing in addition to activity in the same field of testing in an accredited stationary laboratory under the same owner.

(b) In addition to the payment of accreditation fees, laboratories located outside the State of California shall reimburse the department for travel and per diem necessary to perform onsite inspections.

(c) If reciprocity is established by regulation as described in Section 1011, the regulations may provide for the waiver of accreditation fees for program activities considered equivalent.

(d) Fees collected under this section shall be adjusted annually as specified in Section 113. In addition, the department shall increase or decrease the fees collected under this section, as necessary, in order to support the full program costs of this chapter.

(e) State and local government-owned laboratories in California established under Section 1000 or performing work only in a reference capacity as a reference laboratory are exempt from the payment of the fee prescribed under subdivision (a).

(f) In addition to the payment of accreditation fees, laboratories accredited or applying for accreditation in fields of testing, (20), (21),

or (22) under subdivision (a) shall pay the department a fee of four hundred dollars ($400) for the preparation and handling of each performance evaluation sample set.

(g) For the purpose of this section, a reference laboratory is a laboratory owned and operated by a governmental regulatory agency for the principal purpose of analyzing samples referred by other laboratories for confirmatory analysis. Reference laboratories carry out quality assurance functions relative to other laboratories and may carry out unusual, highly specialized, and difficult analyses not generally available through commercial laboratories, and a limited amount of routine analyses, for regulatory purposes only, and without assessing per-sample fees for the services.

SEC. 5. Section 1019 of the Health and Safety Code is amended to read:

1019. Any laboratory which is accredited or has applied for accreditation, or for renewal of accreditation under this chapter, shall analyze performance evaluation samples provided by the department. The samples shall be tested by the laboratory according to methods specifically approved for this purpose by the United States government or the department, or alternate methods of demonstrated adequacy or equivalence, as determined by the department. Results of the testing shall be submitted to the department on forms provided by the department on or before the date specified by the department, and shall be used in determining the competency of the laboratory. The department shall not be charged a fee for the analysis of the performance evaluation samples. The department shall provide performance evaluation sample sets not less than twice nor more than four times a year to each accredited laboratory which performs analyses of food for pesticide residues.

SEC. 6. Section 26508 is added to the Health and Safety Code, to read:

26508. (a) A laboratory which performs analyses of foods for pesticide chemical residues for other persons shall be accredited pursuant to Chapter 7.5 (commencing with Section 1010) of Part 2 of Division 1. This subdivision shall not apply to any of the following:

(1) A laboratory operated by a government agency.

(2) A laboratory not operated for commercial purposes that performs pesticide chemical residue analysis on foods for research or quality control for the internal use of the person initiating the analysis. For purposes of this section, "commercial purposes" means that the laboratory performs pesticide chemical residue analysis on the foods primarily for the purpose of making a profit.

(b) A laboratory accredited pursuant to Section 12591 of the Food and Agricultural Code shall not be required to be accredited under this section until January 1, 1992.

(c) A laboratory which performs analyses of foods for pesticide chemical residues, but which is not required by subdivision (a) to be accredited may apply for accreditation pursuant to Chapter 7.5

(commencing with Section 1010) of Part 2 of Division 1.

(d) This section shall become operative on January 1, 1991, or 60 days after the initial set of regulations adopted pursuant to Sections 1011 and 1012 becomes effective, whichever is later.

SEC. 7. Section 26509 is added to the Health and Safety Code, to read:

26509. (a) Every laboratory or other person which performs or which brokers or otherwise arranges for the performance of pesticide chemical analysis on food shall report to the appropriate state agency any finding of pesticide chemical residues in a food for which no chemical residue tolerance has been established or that is in excess of federal or state residue tolerances or tolerances for a pesticide suspended, banned, or otherwise not permitted by the Department of Food and Agriculture or the United States Environmental Protection Agency, if the food is in the channels of trade. The report shall be made as soon as possible, and in any event, not later than 24 hours after the analyzing laboratory makes the finding. Findings on raw agricultural commodities and dairy products shall be reported to the Department of Food and Agriculture. Findings on all other foods shall be made to the State Department of Health Services.

(b) For the purpose of reporting findings regarding raw agricultural commodities, "in the channels of trade" means the point at which the raw agricultural commodities leave the farm, including raw agricultural commodities bound for processing up to the point that processing is initiated. For the purpose of reporting findings in processed foods, "in the channels of trade" means at the point the processed food leaves the direct control of the processor, which means either that the product is not located on the premises owned by, or under the control of, the processor or a portion of the product has been released for sale or use.

(c) The person submitting the food for pesticide chemical analysis to a laboratory or other person shall certify in writing, at the time the sample is submitted for analysis, whether or not the food has entered the channels of trade and if not, whether or not the food will enter the channels of trade prior to the communication of the test results Absent that certification, the laboratory or person receiving the food for chemical analysis shall presume that the food has entered the channels of trade and make the report or reports required by subdivision (a).

(d) The department shall adopt standardized reporting guidelines for laboratories and shall provide laboratories with those guidelines and a list of citations and other sources of information regarding applicable pesticide chemical tolerances.

(e) The agency shall provide to the reporting laboratory or other person, within a reasonable time, a written description of any additional information the agency requests regarding the sample in question.

SEC. 8. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1200

An act to amend Section 12841 of, and to add Sections 12535, 12797, 12798, 12846, 12979, 13060, 13061, 55861.7, and 56571.7 to, the Food and Agricultural Code, and to add Sections 26505.5, 26506.6, and 26509 to the Health and Safety Code, relating to food and agriculture, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) California presently has the safest food in the world as a result of a combination of federal and state programs of pesticide registration, pesticide use controls, licensing persons who recommend and use pesticides, and monitoring food for pesticide residues and other contaminants.

(b) California has continually upgraded the state's pesticide regulatory and food safety programs to ensure that California produced food is in the forefront of food safety.

(c) Additional regulatory efforts will build upon and strengthen California's food safety programs to further ensure that California consumed foods meet our existing rigorous standards for safe consumption.

(d) Recent events have heightened public awareness relative to food safety and led to a desire for additional regulatory practices to advance California's food safety protections even further.

(e) Pest management is vital to the agricultural economy and to continued availability of an adequate, wholesome, and economical food supply.

(f) There is a need to develop additional funding alternatives that will provide a more broad based and equitable approach to the activities required by this act. It is the intent of the Legislature that the Department of Food and Agriculture immediately coordinate a review, with the affected entities, of the funding provisions of this

act. The review shall include recommendations for alternative long-term funding mechanisms and shall identify additional sources of funding for the extension of alternative pest management research under this act. The department shall report its findings to the Legislature by July 1, 1990.

SEC. 2. Section 12535 is added to the Food and Agricultural Code, to read:

12535. (a) Commencing in 1990, the department shall substantially expand and maintain its focused pesticide residue monitoring program beyond the 1988 level. The focused monitoring program shall be prioritized considering pesticides of greatest health concern and contribution to dietary exposure, and for various sensitive subpopulations, including children.

(b) The department shall consider, but not be limited to, the following lists of pesticides in establishing priorities for monitoring:

(1) Pesticides identified by the federal Environmental Protection Agency as known, possible, or probable human carcinogens which are registered for use on food crops.

(2) Pesticides listed as high priority for risk assessment as a result of the evaluation process of the Birth Defect Prevention Act of 1984.

(3) Pesticides listed as known to cause cancer or reproductive toxicity pursuant to Section 25249.9 of the Health and Safety Code.

(4) Class I and II pesticides on the United States Food and Drug Administrations's Surveillance Index.

SEC. 3. Section 12797 is added to the Food and Agricultural Code, to read:

12797. (a) The director, on or before March 1, 1990, in consultation with the State Director of Health Services, shall also establish a separate scientific advisory committee with an emphasis on persons with expertise in residue chemistry, analytical chemistry, or food technology from the department, the State Department of Health Services, qualified public and private institutions of higher education, laboratories licensed pursuant to Section 26507 of the Health and Safety Code, consumer interest groups, and the agricultural chemical industry. The committee shall make recommendations on how the state can improve its existing pesticide residue analytical methods and review recent scientific advancements concerning new and revised analytical methods for testing produce and processed foods for the presence of pesticide residues. The director may invite representatives of the federal Environmental Protection Agency and the United States Food and Drug Administration to participate in the committee's review.

(b) The committee shall determine when newly emerging analytical methods are developed to the point that it is feasible to adopt their usage in the residue monitoring programs of the department or the State Department of Health Services.

(c) The committee shall focus its review on analytical methods for pesticide residues not detectable on the existing multiple-residue screens available for use by the department or the State Department

of Health Services, and on pesticide residues which the committee deems are difficult to accurately identify and quantify due to time, equipment, or expense.

SEC. 4. Section 12798 is added to the Food and Agricultural Code, to read:

12798. (a) The department shall make funds available to qualified public and private entities to conduct pest management research projects, with an emphasis on projects that will result in the reduction of pesticide use, the use of safer pesticides, or minimizing pesticide residues.

(b) Research conducted pursuant to this section shall have the further development of alternative pest management practices and methods as a priority. Prior to making research awards, the department shall assess existing research activities and developments in integrated pest management, alternatives to pesticides, and other alternative pest management practices and methods, including, but not limited to, cultural, biological, and biotechnological research.

(c) (1) The director shall appoint a pest management research screening committee, of not to exceed nine persons, the membership of which may be rotated as determined by the director.

(2) The committee shall consist of agriculturalists, including organic farmers, researchers, scientists, academics, representatives of public interest organizations, and other persons who are knowledgeable, technically qualified, and experienced in pest management techniques, with an emphasis on alternative methods, for which projects are being reviewed. The committee shall meet at the call of the director to review and give its advice and recommendations with respect to research projects funded by this section.

(d) In order to facilitate the utilization of pest management practices and methods developed pursuant to this section, the director shall cooperate with qualified public and private entities to provide outreach consultation, information dissemination, and education services to the agricultural community and other interested parties.

SEC. 5. Section 12841 of the Food and Agricultural Code is amended to read:

12841. (a) Each registrant shall pay to the director an assessment not to exceed nine mills ($0.009) per dollar of sales for all sales of his or her registered and labeled economic poisons for use in this state. A registrant is not required to pay an assessment on his or her products registered and labeled only for use in further manufacturing or formulating of economic poisons. The director may reduce the assessment if he or she determines that a lesser assessment rate, together with other available funds, will provide adequate revenue to administer and enforce Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), and Chapter 3.5 (commencing

with Section 14101).

(b) Upon application of any registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for economic poison, and is sold in combination, and whether the mill assessment under this section shall be on the economic poison value only, when the product is designed, developed, manufactured, and sold primarily for other than an economic poison use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than an economic poison use, the assessment provided for by this section shall be paid on the equivalent percentage of the sales price of the active ingredients of the economic poison product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the economic poison portion to the total sales price of the combination product.

(c) For purposes of this section, "active ingredient" means any active ingredient which is required to be stated on the label on any registered economic poison under Section 12883.

(d) It has been and continues to be the intent of the Legislature that this division requires the department to register all economic poisons prior to their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control economic poison use in accordance with this division. The department shall continue to collect the mill tax as provided in this section at the same rate on all registered agricultural and registered nonagricultural economic poisons.

SEC. 6. Section 12846 is added to the Food and Agricultural Code, to read:

12846. The Food Safety Account is hereby created in the Department of Food and Agriculture Fund to be used, upon appropriation, for purposes of Sections 12535, 12797, 12798, 12979, 13060, and 13061 of this code and Section 26509 of the Health and Safety Code.

SEC. 7. Section 12979 is added to the Food and Agricultural Code, to read.

12979. A pesticide use report shall be submitted to the commissioner or director on a form and in a manner prescribed by the director. The data from the pesticide use reports shall be considered in setting priorities for food monitoring, pesticide use enforcement, farm worker safety programs, environmental monitoring, pest control research, public health monitoring and research, and similar activities by the department, or by the department in cooperation with other state, regional, or local agencies with appropriate authority.

SEC. 8. Section 13060 is added to the Food and Agricultural Code, to read.

13060 (a) Commencing July 1, 1990, the department, in cooperation with the State Department of Health Services, shall

conduct an assessment of dietary risks associated with the consumption of produce and processed foods treated with pesticides. This assessment shall integrate adequate data on acute effects and the mandatory health effects studies specified in subdivision (c) of Section 13123, appropriate dietary consumption estimates, and relevant residue data based on the department's and the State Department of Health Services' monitoring data and appropriate field experimental and food technology information to quantify consumer risk. Differences in age, sex, ethnic, and regional consumption patterns shall be considered. The department shall submit each risk assessment to the State Department of Health Services, with necessary supporting documentation, for peer review, which shall consider the adequacy of public health protection. The State Department of Health Services may provide comments to the department. The department shall formally respond to all of the comments made by the State Department of Health Services. The department shall modify the risk assessment to incorporate the comments as deemed appropriate by the director. All correspondence between the department and the State Department of Health Services in this matter shall be made available to any person, upon request, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) The department shall consider those pesticides designated for priority food monitoring pursuant to Section 12535 and the results of the department's or the State Department of Health Services' monitoring in establishing priorities for the dietary risk assessments.

(c) (1) If the department lacks adequate data on the acute effects of pesticide active ingredients or mandatory health effects studies specified in subdivision (c) of Section 13123 necessary to accurately estimate dietary risk, the department shall require the appropriate data to be submitted by the registrant of products whose labels include food uses. This subdivision shall not be construed to affect the time frames established pursuant to Section 13127.

(2) No applicant for registration, or current registrant, of a pesticide who proposes to purchase or purchases a registered pesticide from another producer in order to formulate the purchased pesticide into an end use product shall be required to submit or cite data pursuant to this section or offer to pay reasonable compensation for the use of any such data if the producer is engaged in fulfilling the data requirements of this section.

(d) (1) If a registrant fails to submit the data requested by the director pursuant to this section within the time specified by the director, the director shall issue a notice of intent to suspend the registration of that pesticide. The director may include in the notice of intent to suspend any provisions that are deemed appropriate concerning the continued sale and use of existing stocks of that pesticide. Any proposed suspension shall become final and effective 30 days from the receipt by the registrant of the notice of intent to

suspend, unless during that time a request for hearing is made by a person adversely affected by the notice or the registrant has satisfied the director that the registrant has complied fully with the requirements that served as a basis for the notice of intent to suspend. If a hearing is requested, a 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. The only matter for resolution at the hearing shall be whether the registrant has failed to take the action that served as the basis for the notice of intent to suspend the registration of the pesticide for which additional data is required and whether the director's determination with respect to the disposition of existing stocks is consistent with this subdivision.

(2) A hearing shall be held and a determination made within 75 days after receipt of a request for a hearing. The decision rendered after completion of the hearing shall be final. Any registration suspended shall be reinstated by the director if the director determines that the registrant has complied fully with the requirements that served as a basis for the suspension of the registration.

(e) If the department finds that any pesticide use represents a dietary risk that is deleterious to the health of humans, the department shall prohibit or take action to modify that use or modify the tolerance pursuant to Section 12561, or both, as necessary to protect the public.

SEC. 9. Section 13061 is added to the Food and Agricultural Code, to read:

13061. The department and the State Department of Health Services shall jointly review the existing federal and state pesticide registration and food safety system and determine if the existing programs adequately protect infants and children from dietary exposure to pesticide residues. The review shall commence as early as possible in 1990, so that any policy or administrative adjustments determined to be necessary as a result of the joint review can be made on a timely basis. The department shall consult with the University of California and other qualified public and private entities in conducting the joint review. The joint review shall continue for a sufficient time in order to evaluate the report of infant exposure to pesticide residues, which is presently being undertaken by the National Academy of Sciences. Within six months of the official release of the National Academy of Sciences' study, the department shall finalize a report describing the evaluation that was conducted pursuant to this section, including any recommendations for modification of the existing regulatory system in order to adequately protect infants and children. A copy of this report shall be submitted to the Governor and the Legislature.

SEC. 10. Section 55861.7 is added to the Food and Agricultural Code, to read:

55861.7. Notwithstanding Section 55861.5, in addition to the fee paid pursuant to Section 55861, each licensee shall pay a 50 percent

surcharge to the director, in a form and manner prescribed by the director. This section shall not apply to those licensees the department determines should not be assessed due to the limited applicability of Sections 12535, 12797, 12798, 13060, and 13061 of this code or Section 26505.5 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual licensees. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Food and Agriculture Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

SEC. 11. Section 56571.7 is added to the Food and Agricultural Code, to read:

56571.7. Notwithstanding Section 56571.5, in addition to the fee paid pursuant to Section 56571, each licensee shall pay a 50 percent surcharge to the director, in a form and manner prescribed by the director. This section shall not apply to those licensees the department determines should not be assessed due to the limited applicability of Sections 12535, 12797, 12798, 13060, and 13061 of this code or Section 26505.5 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual licensees. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Food and Agriculture Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

SEC. 12. Section 26505.5 is added to the Health and Safety Code, to read:

26505.5. (a) On or before July 1, 1990, the department shall commence and maintain a program for monitoring processed foods for pesticide residues, chemicals, microbes, and other contaminants. In designing the program, the department shall take into consideration any information developed pursuant to Section 26505.

(b) The department shall consult with the Department of Food and Agriculture in designing the pesticide residue component of the monitoring program, to facilitate focusing the testing in areas of greatest concern. Among the pesticides to be reviewed for possible monitoring shall be those contained in the lists of pesticides identified in Section 12535 of the Food and Agricultural Code.

(c) In the development and ongoing operation of the department's monitoring program, the department shall consider, in establishing priorities:

(1) Potential concentration effects that may occur during processing.

(2) Targeting foreign and domestic imported processed foods according to their estimated California market share.

(3) The extent to which processed foods are a part of the infant and child diet.

SEC. 13. Section 26506.6 is added to the Health and Safety Code, to read:

26506.6. In addition to the fee paid pursuant to Section 26506.2,

each registrant shall pay a surcharge of one hundred dollars ($100) to the director, in a form and manner prescribed by the director. This section shall not apply to those registrants the department determines should not be assessed due to limited applicability of Sections 12535, 12797, 12798, 13060, and 13061 of the Food and Agricultural Code or Section 26505.5 of this code to those registrants, or because substantial economic hardship would result to individual registrants. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Food and Agriculture Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

SEC. 14. Section 26509 is added to the Health and Safety Code, to read:

26509. (a) Every laboratory or other person which performs or which brokers or otherwise arranges for the performance of pesticide chemical analysis on food shall report to the appropriate state agency any finding of pesticide chemical residues in a food for which no chemical residue tolerance has been established or that is in excess of federal or state residue tolerances or tolerances for a pesticide suspended, banned, or otherwise not permitted by the Department of Food and Agriculture or the United States Environmental Protection Agency, if the food is in the channels of trade. The report shall be made as soon as possible, and in any event, not later than 24 hours after the analyzing laboratory makes the finding. Findings on raw agricultural commodities and dairy products shall be reported to the Department of Food and Agriculture. Findings on all other foods shall be made to the State Department of Health Services.

(b) For the purpose of reporting findings regarding raw agricultural commodities, "in the channels of trade" means the point at which the raw agricultural commodities leave the farm, including raw agricultural commodities bound for processing up to the point that processing is initiated. For the purpose of reporting findings in processed foods, "in the channels of trade" means at the point the processed food leaves the direct control of the processor, which means either that the product is not located on the premises owned by, or under the control of, the processor or a portion of the product has been released for sale or use.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 16. The sum of three million three hundred twenty-one

thousand six hundred thirty-eight dollars ($3,321,638) is hereby appropriated as follows:

(a) From the General Fund to the State Department of Health Services for the purposes of implementing Section 13060 of the Food and Agricultural Code and Section 26505.5 of the Health and Safety Code $2,000,000

(b) From the Food Safety Account in the Department of Food and Agriculture Fund to the Department of Food and Agriculture for the purposes of implementing Sections 12535, 12797, 12798, 13060, and 13061 of the Food and Agricultural Code $821,638

(c) From the Food Safety Account in the Department of Food and Agriculture Fund to the Department of Food and Agriculture for the purposes of funding pest management research projects pursuant to Section 12798 of the Food and Agricultural Code $500,000

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expand and strengthen California's food safety program and to further ensure that foods reaching consumers in California continue to be the safest in the world, it is necessary that this act take effect immediately.

CHAPTER 1201

An act to amend Section 14009.5 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 14009.5 of the Welfare and Institutions Code is amended to read:

14009.5. (a) Notwithstanding any other provision of this chapter, when a decedent has received health care services under this chapter or Chapter 8 (commencing with Section 14200) the department may claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services

received.

(b) The department may not claim in any of the following circumstances:

(1) The eligible person was under 65 when services were received.

(2) Where there is any of the following:

(A) A surviving spouse.

(B) A surviving child who is under age 21.

(C) A surviving child who is blind or permanently and totally disabled, within the meaning of the Social Security Act (42 U.S.C.A. Sec. 1382c).

(c) (1) The department shall waive its claim, in whole or in part, if it determines that enforcement of the claim would result in substantial hardship to other dependents, heirs, or survivors of the individual against whose estate the claim exists.

(2) The department shall notify individuals of the waiver provision and the opportunity for a hearing to establish that a waiver should be granted.

(3) Waivers shall be granted consistent with emergency regulations, which the department shall adopt pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to implement this section. The adoption of regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department in order to implement this section shall not be subject to the review and approval of the Office of Administrative Law. The department shall adopt and file these regulations with the Secretary of State not later than March 1, 1990. These regulations shall become effective immediately upon filing with the Secretary of State.

The regulations shall, at a minimum, consider all of the following:

(A) The income, resources, and liabilities of any dependent, heir, or survivor.

(B) The length of time the dependent, heir, or survivor lived with the decedent and the level and type of care provided by the dependent, heir, or survivor which delayed or prevented institutional placement of the eligible person.

(C) The dependent's, heir's or survivor's employability.

(d) The department shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code within the 120-day period during which the emergency regulations adopted by the department pursuant to subdivision (c) are in effect.

(e) For purposes of this section "dependents" includes, but is not limited to, immediate family or blood relatives of the decedent.

CHAPTER 1202

An act to amend Section 13965 of the Government Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature finds and declares that the experience of sexual assault is unique among the many categories of crime. Victims of this type of crime take months to regain control of their lives and rebuild self esteem lost due to the traumatization of the crime. They are revictimized throughout the duration of the legal process and long afterwards. In many cases, the victim cannot return to work for a long period of time, and in some cases, cannot return at all. This results in wage loss and a need for job rehabilitation.

SEC. 2. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize, without good cause, a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs

of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limits provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault which occurred after January 1, 1980, who has made more than two

appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

SEC. 3. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of services, including, but not limited to, a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant as follows:

(1) Attorney's fees may not exceed 10 percent of the award or five hundred dollars ($500), whichever is less.

(2) In addition to any amount awarded under paragraph (1) of this subdivision, after the successful appeal of an adverse board decision pursuant to subdivision (c) of Section 13969.1, a court may award reasonable attorney's fees not to exceed one thousand dollars ($1,000).

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under subdivision (d) of this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault which occurred after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

SEC. 4. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services,

including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award,

or five hundred dollars ($500), whichever is less.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault which occurred after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, incurred by a victim for which restitution is requested pursuant to this section. For mental health and counseling services provided to victims of crime, rates shall not exceed the statewide average.

To assure service limitations which are uniform and appropriate to the levels of mental health treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand

dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

SEC. 5. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), which may include an award of not more than one thousand dollars ($1,000) for other reasonable expenses related to the crime or the consequences or

effects of the crime on the victim, and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault which occurred after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

SEC. 6. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of services, including, but not limited to, a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public

assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant as follows:

(1) Attorney's fees may not exceed 10 percent of the award or five hundred dollars ($500), whichever is less.

(2) In addition to any amount awarded under paragraph (1) of this subdivision, after the successful appeal of an adverse board decision pursuant to subdivision (c) of Section 13969.1, a court may award reasonable attorney's fees not to exceed one thousand dollars ($1,000).

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under subdivision (d) of this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault

which occurred after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, incurred by a victim for which restitution is requested pursuant to this section. For mental health and counseling services provided to victims of crime, rates shall not exceed the statewide average.

To assure service limitations which are uniform and appropriate to the levels of mental health treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

SEC. 7. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of services, including, but not limited to, a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series

of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), which may include an award of not more than one thousand dollars ($1,000) for other reasonable expenses related to the crime or the consequence or the effects of the crime on the victim, and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant as follows:

(1) Attorney's fees may not exceed 10 percent of the award or five hundred dollars ($500), whichever is less.

(2) In addition to any amount awarded under paragraph (1) of this subdivision, after the successful appeal of an adverse board decision pursuant to subdivision (c) of Section 13969.1, a court may award reasonable attorney's fees not to exceed one thousand dollars ($1,000).

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under subdivision (d) of this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for

psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault which occurred after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

SEC. 8. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), which may include an award of not more than one thousand dollars ($1,000) for other reasonable expenses related to the crime or the consequences or effects of the crime on the victim, and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault which occurred after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, incurred by a victim for which restitution is requested pursuant to this section. For mental health and counseling services provided to victims of crime, rates shall not exceed the statewide average.

To assure service limitations which are uniform and appropriate to the levels of mental health treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

SEC. 9. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of services, including, but not limited to, a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), which may include an award of not more than one thousand dollars ($1,000) for other reasonable expenses related to the crime or the consequences or effects of the crime on the victim, and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify

an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, as follows:

(1) Attorney's fees may not exceed 10 percent of the award or five hundred dollars ($500), whichever is less.

(2) In addition to any amount awarded under paragraph (1) of this subdivision, after the successful appeal of an adverse board decision pursuant to subdivision (c) of Section 13969.1, a court may award reasonable attorney's fees not to exceed one thousand dollars ($1,000).

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under subdivision (d) of this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision

(a), to or on behalf of a victim of a crime involving sexual assault which occured after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, incurred by a victim for which restitution is requested pursuant to this section. For mental health and counseling services provided to victims of crime, rates shall not exceed the statewide average.

To assure service limitations which are uniform and appropriate to the levels of mental health treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

SEC. 10. (a) Section 3 of this bill incorporates amendments to Section 13965 of the Government Code proposed by both this bill and AB 245. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 13965 of the Government Code, and (3) SB 556 is not enacted or as enacted does not amend that section, (4) AB 1757 is not enacted or as enacted does not amend that section, and (5) this bill is enacted after AB 245, in which case Sections 2, 4, 5, 6, 7, 8, and 9 of this bill shall not become operative.

(b) Section 4 of this bill incorporates amendments to Section 13965 of the Government Code proposed by both this bill and SB 556. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 13965 of the Government Code, and (3) AB 245 is not enacted or as enacted does not amend that section, (4) AB 1757 is not enacted or as enacted does not amend that section, and (5) this bill is enacted after SB 556, in which case Sections 2, 3, 5, 6, 7, 8, and 9 of this bill shall not become operative.

(c) Section 5 of this bill incorporates amendments to Section 13965

of the Government Code proposed by both this bill and AB 1757. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 13965 of the Government Code, and (3) AB 245 is not enacted or as enacted does not amend that section, (4) SB 556 is not enacted or as enacted does not amend that section, and (5) this bill is enacted after AB 1757, in which case Sections 2, 3, 4, 6, 7, 8, and 9 of this bill shall not become operative.

(d) Section 6 of this bill incorporates amendments to Section 13965 of the Government Code proposed by this bill, AB 245, and SB 556. It shall only become operative if (1) this bill, AB 245, and SB 556 are enacted and become effective January 1, 1990, (2) this bill, AB 245, and SB 556 amend Section 13965 of the Government Code, (3) AB 1757 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 245 and SB 556, in which case Sections 2, 3, 4, 5, 7, 8, and 9 of this bill shall not become operative.

(e) Section 7 of this bill incorporates amendments to Section 13965 of the Government Code proposed by this bill, AB 245, and AB 1757. It shall only become operative if (1) this bill, AB 245, and AB 1757 are enacted and become effective January 1, 1990, (2) this bill, AB 245, and AB 1757 amend Section 13965 of the Government Code, (3) SB 556 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 245 and AB 1757, in which case Sections 2, 3, 4, 5, 6, 8, and 9 of this bill shall not become operative.

(f) Section 8 of this bill incorporates amendments to Section 13965 of the Government Code proposed by this bill, SB 556, and AB 1757. It shall only become operative if (1) this bill, SB 556, and AB 1757 are enacted and become effective January 1, 1990, (2) this bill, SB 556, and AB 1757 amend Section 13965 of the Government Code, (3) AB 245 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 556 and AB 1757, in which case Sections 2, 3, 4, 5, 6, 7, and 9 of this bill shall not become operative.

(g) Section 9 of this bill incorporates amendments to Section 13965 of the Government Code proposed by this bill, AB 245, SB 556, and AB 1757. It shall only become operative if (1) all four bills are enacted and become effective January 1, 1990, (2) all four bills amend Section 13965 of the Government Code, and (3) this bill is enacted after AB 245, SB 556, and AB 1757, in which case Sections 2, 3, 4, 5, 6, 7, and 8 of this bill shall not become operative.

CHAPTER 1203

An act to amend Sections 51600 and 51601 of, and to add Chapter 6 (commencing with Section 51950) to Part 4 of Division 31 of, the Health and Safety Code, relating to seismic safety, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 51600 of the Health and Safety Code is amended to read:

51600. The Legislature finds and declares as follows:

(a) For reasons of prudent investment policy, private lending institutions are not making mortgage financing available for residential structures located in many older residential neighborhoods, or for certain housing developments occupied or intended to be occupied by substantial numbers of persons and families of low and moderate income because of the perceived risks these loans entail. The lack of this financing has caused and contributed to deterioration of residential neighborhoods, inhibited local governments in their attempts to arrest and reverse deterioration through local code enforcement programs, and generally reduced or limited the supply of safe, decent, and sanitary housing available to persons and families of low and moderate income.

(b) The state has authorized local agencies, redevelopment agencies, and housing authorities to provide financing for preservation and construction of residential structures to enhance housing opportunities for persons and families of low or moderate income. However, some of these local public entities will be unable to sell revenue bonds pursuant to that act on terms sufficiently favorable to enable them to make loans at less than the market-rate interest because of a lack of adequate bond security.

(c) The agency, although it is empowered to sell revenue bonds in order to raise funds for housing assistance, may be unable to market these bonds on terms and at interest rates adequate to enable the agency to accomplish its purposes.

(d) For reasons of prudent investment policy, private lending institutions are not making mortgage financing available for rental housing developments in California because of the perceived risks these loans entail. The lack of this financing has resulted in a severe shortage of rental housing units in many areas of the state. This shortage of rental housing units particularly impacts persons and families of low income.

(e) For reasons of prudent investment policy, private lending institutions are not making mortgage financing available for the

rehabilitation of buildings identified by local jurisdictions as being potentially hazardous, as defined in Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code, or as being hazardous to life in the event of an earthquake, as defined in Article 4 (commencing with Section 19160) of Chapter 2 of Part 3 of Division 13.

SEC. 2. Section 51601 of the Health and Safety Code is amended to read:

51601. It is the intent of the Legislature in enacting this part to establish a program of bond and loan insurance to encourage and facilitate the preservation of existing housing and improve housing opportunities for persons and families of low or moderate income by reducing the risk factor (1) for loans for housing in older deteriorating areas and neighborhood preservation areas, (2) for revenue bonds issued by local agencies for the purpose of providing housing for persons and families of low or moderate income, (3) for loans to provide housing for persons and families of low or moderate income, (4) for privately financed loans for rental housing developments and structures which benefit lower income households, and (5) for construction loan loss guarantee assistance for rehabilitation of buildings in need of seismic rehabilitation improvements, where the building has been identified by local jurisdictions as being potentially hazardous, as defined in Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code, or as being hazardous to life in the event of an earthquake, as defined in Article 4 (commencing with Section 19160) of Chapter 2 of Part 3 of Division 13.

SEC. 3. Chapter 6 (commencing with Section 51950) is added to Part 4 of Division 31 of the Health and Safety Code, to read:

CHAPTER 6. LOAN LOSS GUARANTEE PROGRAM

51950. The California Housing Insurance Fund may administer a loan loss guarantee program in order to induce private lenders to make construction loans for seismic rehabilitation improvements which are designed to increase seismic structural safety in accordance with a plan developed by a civil engineer, structural engineer, or an architect for a property which has been identified by a local jurisdiction as being potentially hazardous, as defined in Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code, or as being hazardous in the event of an earthquake, as defined in Article 4 (commencing with Section 19160) of Chapter 2 of Part 3 of Division 13.

51951. The fund shall only issue rehabilitation loan loss guarantees on buildings with five or more residential units and where any commercial use in those buildings is limited to the basement and ground floors or where the commercial use occupies less than 15 percent of the total square footage of the building.

51952. The fund may issue a loan loss guarantee in the amount of

25 percent of the actual loss of a loan guaranteed under this section. The fund may not guarantee any loan loss in excess of the amount of permanent loan financing for the property. No guarantee shall be made for a property which does not have a binding, unconditional permanent financing commitment from a lender acceptable to the fund, nor for a property in which the owner has less than a 20-percent equity interest.

51953. The fund shall collect a premium for a loan loss guarantee as provided in Section 58155. All premiums shall be deposited in the Seismic Rehabilitation Loan Loss Guarantee Account within the fund, which is hereby created.

Premiums shall be calculated in an amount which, when added to the other revenues of the account, will be adequate to, in the following order of priority: pay losses on claims made under loan loss guarantees issued hereunder, pay actual operating costs of the program, and repay moneys transferred to the account pursuant to Section 51954. The fund is authorized to transfer from the account such actual operating expenses as may be necessary for its administration of this program. Any excess premiums shall be retained in the account and used to expand the loan loss guarantee program hereunder.

Moneys in the account shall be segregated from other moneys of the fund and shall not be transferred from the account for any purpose, except as provided in this chapter. Loan loss guarantees issued by the fund for the benefit of either construction lenders or borrowers shall specify that only the moneys in the account are available to pay claims under loan loss guarantees and that the other assets of the fund, the assets of the California Housing Finance Agency, and the assets of the State of California are not available to pay claims or damages resulting from loan loss guarantees.

51954. Notwithstanding any other provision of law, the California Housing Insurance Fund may borrow one million eight hundred thousand dollars ($1,800,000) from the Local Agency Indebtedness Fund, established pursuant to Article 6.5 (commencing with Section 16496) of Chapter 3 of Division 4 of Title 2 of the Government Code, for the purpose of establishing the Seismic Rehabilitation Loan Loss Guarantee Account within the fund as authorized by subdivision (d) of Section 51659.

Upon request of the fund, the Pooled Money Investment Board shall transfer from the Local Agency Indebtedness Fund such amounts as may be authorized hereunder and upon such terms and conditions as the fund and the board shall agree. Moneys borrowed hereunder shall constitute a loan which shall be repaid with simple interest accrued at the pooled money investment rate exclusively from premium income collected by the fund for seismic rehabilitation loan loss guarantees issued under this chapter. No other moneys of the fund or the agency shall be liable for repayment of the loan from the Local Agency Indebtedness Fund. The loan authorized, along with accrued interest, shall be due and payable not

later than one year from the date of expiration of the last outstanding loan loss guarantee issued, or not later than January 1, 2010, whichever comes first, or unless the Legislature extends the sunset provision of this program because of the success and continuing need for the program.

Moneys transferred to the fund under this section may be used to create reserves for loan loss guarantees authorized by this chapter and for the initial administrative expenses of the program which are not offset by premium income.

51955. In addition to the powers expressly granted by this chapter, the fund shall have all the powers granted under this part in administering this program which are not inconsistent with this chapter.

51956. The California Housing Finance Agency shall prepare an annual statement on the condition of the program established by this chapter. The statement shall be transmitted on or before January 1 of each year to the Governor, the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate Committees on Appropriations, Budget and Fiscal Review, and Housing and Urban Affairs, the Chairpersons of the Assembly Committees on Housing and Community Development and Ways and Means, and the Directors of the Seismic Safety Commission and Office of Emergency Services. This chapter shall be inoperative if moneys are not transferred to the fund pursuant to Section 51659 for the purposes defined in Section 51950.

SEC. 4. The Legislature finds and declares that this act supports the public purpose of assuring that the public health and safety is protected through the making of seismic rehabilitation improvements to hazardous buildings. The Legislature further finds and declares that this act is necessary to support this public purpose because California lending institutions would otherwise be reluctant to loan private funds for seismic rehabilitation improvements to hazardous buildings.

CHAPTER 1204

An act to amend Section 311.5 of the Health and Safety Code, relating to nutrition.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

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

(1) The California Special Supplemental Food Program for Women, Infants, and Children (WIC) is one of the most effective

preventive measures against infant mortality and life disabilities caused by low birth weight.

(2) By providing comprehensive and early perinatal care, of which WIC is an integral part, currently high hospitalization and health care costs to the state are lessened considerably.

(3) Due to limited federal funding, the California WIC program is only able to serve 35 percent of the potentially eligible population, leaving approximately 500,000 persons unserved.

(4) Due to recently contracted for infant formula rebate revenues, the State Department of Health Services has the potential to expand WIC services by 110,000 persons.

(5) California is one of only six states that limits income eligibility for the WIC program to less than the federally allowed maximum of 185 percent of the poverty level thereby arbitrarily keeping thousands of working poor families off the program.

(6) Removing this income eligibility barrier to WIC would allow the state department to expand the WIC caseload as rapidly as allowed, given other programmatic constraints. In addition, WIC would have the same income guidelines as Medi-Cal, thereby streamlining intake and access to both of these programs.

(b) It is the intent of the Legislature to do all of the following:

(1) Streamline and make more effective the delivery of perinatal care.

(2) Reduce provider and state administrative paperwork and overhead.

(3) Ensure that all needy pregnant women, infants, and children have prompt access to perinatal and child health care services.

SEC. 2. Section 311.5 of the Health and Safety Code is amended to read:

311.5. As used in this article, the following definitions shall apply:

(a) "Health professional" means a physician and surgeon, registered nurse, nutritionist, dietitian, or state or local medically trained health official, who is competent to professionally evaluate nutritional need and to authorize supplemental foods, as determined by the state department.

(b) "Low income" means an income of not more than 185 percent of the poverty level as determined by the federal poverty income guidelines promulgated by the United States Department of Health and Human Services.

(c) "Recipient" means low-income pregnant women, low-income postpartum and lactating women, and low-income infants and children under five years of age, who are determined to be at nutritional risk by a health professional, based on criteria established by the state department.

(d) "Nutrition coupon" means a check which is limited as to value, food type, and food quantity and which has a limited period of validity.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1205

An act relating to highways.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. (a) Upon the request of the California Transportation Commission, the Department of Transportation may conduct a transportation study of Crow Canyon Road between Castro Valley and San Ramon. The study shall include, but not be limited to, all of the following:

(1) An analysis of the origins and destinations of vehicle traffic on the road in order to ascertain the extent of the use of the road by interregional traffic.

(2) A list of improvements that would be necessary for this road to meet state highway standards.

(3) Potential alternative alignments for the road.

(b) The department shall report the results of this study, including its findings, conclusions, and recommendations, to the Senate Committee on Transportation and to the Assembly Committee on Transportation on or before July 1, 1990.

CHAPTER 1206

An act to add Chapter 11 (commencing with Section 1199.200) to Division 2.5 of the Health and Safety Code, relating to emergency care, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989.]

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

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

(a) Critically ill and injured children have special needs that are different from those of adults. Specialized personnel, equipment, and services are needed to provide adequate treatment and care for these children.

Approximately 20,000 children under the age of 18 require intensive care each year in California for severe medical, surgical, and trauma-related conditions.

Although excellent emergency services and critical care services are available in California, they are often adult oriented and do not address the needs of children.

(b) Significant progress has been made over the past decade in the evaluation and management of life threatening conditions in children and in the development of organized systems of care for critically ill and injured children. Pediatric deaths and disabilities can be reduced if these children are rapidly transported by appropriately trained and equipped personnel to emergency departments and pediatric critical care centers that have appropriate pediatric staff, equipment, and support services for the optimal care of these children.

(c) There is currently little information in the scientific literature about the components of a critical care system for children that may influence outcomes. The American Academy of Pediatrics recommends that a study be done to determine the outcome measures that can be used to evaluate the implementation of a critical care system for critically ill and injured children.

It is extremely important that any model developed be evaluated and demonstrate that the implementation of a pediatric critical care system has a positive effect on the care of critically ill and injured infants and children.

SEC. 2. Chapter 11 (commencing with Section 1199.200) is added to Division 2.5 of the Health and Safety Code, to read:

CHAPTER 11. EMERGENCY AND CRITICAL CARE SERVICES FOR CHILDREN

1199.200. (a) The State Department of Health Services shall

contract with an organization with expertise in program evaluation, pediatric emergency medical services, and critical care, for the purposes specified in subdivision (b).

(b) The contractor, in consultation with a professional pediatric association, a professional emergency physicians association, a professional emergency medical services medical directors association, the Emergency Medical Services Authority, and the State Department of Health Services, shall perform a study that will identify the outcome criteria which can be used to evaluate pediatric critical care systems. This study shall include, but not be limited to, all of the following:

(1) Development of criteria to identify how changes in pediatric critical care systems affect the treatment of critically ill and injured children.

(2) Development of criteria to compare the systems in place in various areas of the state.

(3) Determination of whether the necessary data is currently available.

(4) Estimate of the cost to providers, such as emergency medical service agencies and hospitals, of collecting this data.

(5) Recommendations concerning the most reliable and cost-effective monitoring plan for use by agencies and facilities at the state, regional, and local levels

1199.201. The contractor shall submit the results of the study to the Legislature and the Governor not later than January 1, 1991.

SEC. 3. Of the amount appropriated in Item 4260-111-001 of Section 2.00 of the Budget Act of 1989, one hundred thirty-five thousand dollars ($135,000) shall be expended by the State Department of Health Services in order to implement Section 2 of this act.

CHAPTER 1207

An act to add Article 6 (commencing with Section 999) to Chapter 6 of Division 4 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Article 6 (commencing with Section 999) is added to Chapter 6 of Division 4 of the Military and Veterans Code, to read:

Article 6. Disabled Veterans Participation Goals for Professional Bond Services and State Contracts

999. As used in this article, the following definitions apply:

(a) "Administering agency" means the Treasurer in the case of contracts for professional bond services, and the Office of Small and Minority Business in the case of contracts governed by Section 999.2.

(b) "Awarding department" means any agency, department, constitutional officer, governmental entity, or other officer or entity of the state empowered by law to issue bonds or enter into contracts on behalf of the State of California.

(c) "Bonds" means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by or on behalf of the State of California.

(d) "Contract" includes any contract, agreement, or joint agreement to provide professional bond services to the State of California or an awarding department. "Contract" also includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the State of California.

(e) "Contractor" means any person or persons, firm, partnership, corporation, or combination thereof who submits a bid and enters into a contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California. "Contractor" includes any provider of professional bond services who enters into a contract with an awarding department.

(f) "Disabled veteran" means a veteran of the military, naval, or air service of the United States with a service-connected disability who is a resident of the State of California.

(g) "Disabled veteran business enterprise" means a business concern certified by the administering agency as meeting all of the following requirements:

(1) A sole proprietorship owned by a disabled veteran; or a firm or partnership, 100 percent of the stock or partnership interests of which are owned by one or more disabled veterans.

(2) Managed by, and the daily business operations are controlled by, one or more disabled veterans.

(3) A sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(h) "Goal" means a numerically expressed objective that awarding departments are required to make efforts to achieve.

(i) "Professional bond services" include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter's counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

999.1. (a) (1) Notwithstanding any other provision of law, each

awarding department shall have annual statewide participation goals of not less than 3 percent for disabled veteran business enterprises for contracts entered into by the awarding department during the year for professional bond services. This section shall not apply if a contract for professional bond services of an underwriter is to be obtained by competitive bid. However, each awarding department shall establish goals for contracts to be obtained by competitive bid for professional bond services.

(2) These goals shall apply to the overall dollar amount expended by the awarding department with respect to the contracts for professional bond services relating to the issuance of bonds by the awarding department, including amounts spent as underwriter's discounts.

(b) In attempting to meet the goals set forth in subdivision (a), the awarding department shall consider establishing cocounsel, joint venture, and subcontracting relationships, including disabled veteran business enterprises, in all contracts for professional bond services. It shall be the responsibility of the head of each awarding department to be supportive of the Treasurer's program for assigning representative portions of professional bond services contracts for purposes of meeting the goals established pursuant to this section. However, nothing in this article shall preclude the awarding department from achieving the goals set forth in this section without requiring joint ventures, cocounsel, or subcontracting arrangements.

(c) This section shall not limit the ability of any awarding department to meet a goal higher than those set forth in subdivision (a) for the participation of disabled veteran business enterprises in contracts awarded by the awarding department.

999.2. Notwithstanding any other provision of law, all contracts awarded by any state agency, department, officer, or other state governmental entity for construction, professional services (except those subject to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code), materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 3 percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding department. This article shall not apply to any contract that is subject to Section 10108.5 of the Public Contract Code.

999 3. Notwithstanding Section 999.1, if a contract for professional bond services of an underwriter is to be obtained by competitive bid, the awarding department shall, at a minimum, take all of the following actions:

(a) Deliver the notice of sale or other notification of intention to issue the bonds to all disabled veteran business enterprises that have listed their names with the awarding department for the purpose of this notice and other qualified disabled veteran enterprises known to the awarding department.

(b) State in all notices of sale and other notifications of intention to issue bonds that disabled veteran business enterprises are encouraged to respond.

(c) Require all submitting bidders to certify their awareness of the goals of the awarding department in accordance with this article.

999.4. In awarding contracts to the lowest responsible bidder, the awarding department shall consider the responsiveness of a bidder to disabled veteran business enterprise goals set forth in this article. If a bidder fails to show a good faith effort, the awarding department shall award the contract to the next lowest responsive and responsible bidder.

999.5. (a) The administering agency shall establish a method of monitoring adherence to the goals specified in Sections 999.1 and 999.2, including requiring a followup report from all contractors upon the completion of any sale of bonds.

(b) The administering agency shall adopt rules and regulations, including standards for good faith efforts for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted.

999.6. In implementing this article, the awarding department shall utilize existing resources such as the Office of Small and Minority Business, the Department of Veterans Affairs, the federal Department of Veterans Affairs, and the Small Business Administration.

999.7. Beginning July 1, 1990, and on January 1, 1991, and on January 1 of each year thereafter, the Treasurer and Office of Small and Minority Business shall report to the Governor and the Legislature on the level of participation by disabled veteran business enterprises in contracts identified in this article. If the established goals are not met, the awarding department shall report to the administering agency, which shall in turn report to the Governor and the Legislature, the reasons for its inability to achieve the goals and identify steps it shall take in an effort to achieve the goals. In complying with this section, the Treasurer, at his or her discretion, may utilize the monitoring and reporting procedure established by the Office of Small and Minority Business pursuant to subdivision (a) of Section 10115.3 and Section 10115.5 of the Public Contract Code.

999.8. (a) Notwithstanding anything in this article to the contrary, the validity or enforceability of any bonds, or any contract or any notes, or other obligations issued by the awarding department to provide for the payment of any contract subject to this article shall not be affected in any way by the failure of an awarding department to meet the goals established under this article.

(b) No action may be maintained to enjoin the issuance of any bonds to which this article applies or the enforcement of any contract for professional bond services based on an awarding department's failure to meet the goals set forth in Section 999.1.

CHAPTER 1208

An act to amend Section 972 of, and to add Section 972.1 to, the Military and Veterans Code, relating to veterans, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) There currently reside in California approximately 3.3 million veterans who, along with their dependents, account for approximately 20 percent of the state's total population.

(b) Many veterans who are entitled to federal veterans' benefits are unaware of their entitlement and, instead, seek assistance through state health and welfare programs. County veteran service officers assist veterans in obtaining their federal entitlements, thus eliminating the need for state assistance and avoiding the expenditure of millions in state tax dollars.

SEC. 2. Section 972 of the Military and Veterans Code is amended to read:

972. The board of supervisors may provide the county veteran service officer with any assistance and facilities which it determines to be necessary. If such a position is created and filled, the compensation and expenses of the county veteran service officer shall be a county charge, but the Department of Veterans Affairs, out of state moneys available therefor, shall, pursuant to Section 972.1, pay each county a portion of those costs in an amount determined by the department, conditioned upon the observance of standards and regulations adopted by, and in compliance with the direction of, the department and its authorized representatives. State money available for paying counties any portion of the cost of the compensation and expenses of county veteran service officers shall not include any funds of the Veterans' Farm and Home Building Fund of 1943 Contributions by the department to any county toward the payment of the salary of the county veteran service officer who is not employed in that capacity on a full-time basis shall not exceed the sum of seventy-five dollars ($75) per month.

SEC. 3. Section 972.1 is added to the Military and Veterans Code, to read:

972.1. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Department of Veterans Affairs for allocation, during the 1989–90 fiscal year, for purposes of funding the activities of county veteran service officers pursuant to this section. Funds for allocation in future years shall be as provided in the annual Budget Act.

(b) Funds shall be disbursed each fiscal year on a pro rata basis to counties which have established and maintain a county veteran service officer in accordance with the staffing level and workload of each county veteran service officer under a formula based upon performance which shall be developed by the Department of Veterans Affairs for these purposes, and which allocate county funds in any fiscal year for county veterans service officers in an amount not less than the amount allocated in the 1988–89 fiscal year.

(c) The Department of Veterans Affairs shall annually compile and publish in one or more newspapers of general circulation in each county receiving funding under this section a statistical review to inform the people of the county of the effectiveness of county veteran service officers.

CHAPTER 1209

An act to amend Section 11010 of the Business and Professions Code, to amend Sections 17702.1, 17705.5, 17714, 17718.5, 17719.5, 17732, 17742, 17742.7, 17746.7, 17749, 39140, and 39304.5 of, and to add Sections 16080.5 and 17740.2 to, the Education Code, to amend Sections 53080, 65995, 65995.1, 65996, and 66007 of, and to add Sections 15492, 53080.1, 53080.2, 53080.3, 53080.6, 65974.5, 65995.2, and 66413.7 to, the Government Code, and to amend Sections 18035 and 18035.2 of the Health and Safety Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 11010 of the Business and Professions Code is amended to read:

11010. (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Department of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the department.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts

intended to be used.

(6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities.

(7) A true statement of the use or uses for which the proposed subdivision will be offered.

(8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(9) A true statement of the amount of indebtedness which is a lien upon the subdivision or any part thereof, and which was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.

(10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and which is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.

(11) (A) As to each school district serving the subdivision, a statement approved or ratified by the governing board of the district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the governing board of the school district.

(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice of intention and application for issuance of a public report immediately shall provide the department with the name, address, and telephone number of that district.

(12) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision.

(13) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(14) A true statement of whether or not fill is used, or is proposed to be used in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(15) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the

particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

SEC. 2. The Legislature finds and declares as follows:

(a) Certain school districts in this state are recipients of state school construction apportionments under the State School Building Aid Law of 1952. Each of those recipient districts is required under statute to make specified repayments to the state on the basis of a designated property tax rate to be applied to property within the district.

(b) The school facilities funding program currently employed by this state is the Leroy F. Greene State School Building Lease-Purchase Law of 1976, under which sufficient funding is not available to meet the school facilities needs of school districts throughout the state.

(c) The application of local funding sources to district school facilities needs is encouraged, therefore, in order to alleviate the statewide demand on the state program of school facilities funding. Pursuant to that purpose, the statutory repayment schedule applicable under the State School Building Aid Law of 1952 should be revised so as to reduce the property tax rate in a qualified recipient school district, thus facilitating the approval of a general obligation bond measure within the district.

SEC. 3. Section 16080.5 is added to the Education Code, to read:

16080 5. (a) Notwithstanding any other provision of this chapter, for any school district that qualifies under subdivision (b), as certified by the State Allocation Board, the Controller, upon receipt of a written request to that effect from the governing board of the school district, shall reduce the tax amount that would otherwise be utilized in computing the district's annual repayment obligation under this chapter by the amount of 50 percent.

(b) Subdivision (a) shall apply to any school district in which, on or after January 1, 1989, the voters of the district approve a local general obligation bond measure, which measure includes within its purposes the funding of school facilities construction or reconstruction. Subdivision (a) shall apply to a district that qualifies under this subdivision as of the day following the date of that voter approval.

SEC. 4. Section 17702.1 of the Education Code is amended to read:

17702.1. As used in this chapter, construction shall include, but not be limited to, reconstruction, modernization, and replacement of facilities, and the performance of deferred maintenance activities on facilities pursuant to rules and regulations regarding those activities as may be adopted by the board. Funding for deferred maintenance activities for a facility may be approved under this chapter without

regard to whether project funding for the reconstruction, modernization, or replacement of the facility is prohibited under Section 17721.

SEC. 5. Section 17705.5 of the Education Code is amended to read:

17705.5. (a) The total building cost portion of any state funding for any project approved under this chapter for the construction of one or more school facilities shall be reduced by the amount of the local matching share requirement computed under subdivision (b).

(b) Each school district to which funds are allocated pursuant to this chapter for the construction or reconstruction of one or more school facilities shall provide, as its share of the cost of the project, an amount equal to the product of the applicable maximum fee authorized under Section 53080 of the Government Code, or Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code, or both, times the number of square feet of new residential, commercial, and industrial construction, as appropriate, for which building permits are issued within the boundaries of the school district from the date on which the board approves the district's application for project funding under this chapter to the date upon which the notice of completion for the project is issued. Notwithstanding any other provision of this paragraph, as to any construction for which the payment of a fee, charge, or dedication is required under a contract as described in paragraph (1) of subdivision (c) of Section 65995 of the Government Code, the matching share required under this subdivision shall be deemed to be the maximum payment that may be required under that contract as a condition of the approval of that construction. The amount calculated in this subdivision is reduced by the sum of the following:

(1) Any amounts expended by the district during the described period of time for the acquisition of interim classroom facilities pursuant to Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code from the proceeds of the fee levied by the district during that period. This amount is limited to the acquisition of interim classroom facilities necessary to temporarily house that number of pupils calculated, under state pupil loading standards, by subtracting the average daily attendance of the district based on a three-year enrollment projection from the average daily attendance of the district based on a five-year enrollment projection. Notwithstanding that limit, the board may authorize the acquisition of additional interim classroom facilities for the purposes of this paragraph to the extent it determines that acquisition to be necessary to alleviate severe classroom overcrowding. Enrollment projections for this purpose shall be made in accordance with this chapter.

(2) Any amounts expended by the district during the described period of time for the local matching share of any project funded under this chapter from the proceeds of the fee levied by the district

during that period.

(3) An amount reflecting the extent to which the district is precluded from collecting those fees by reason of the levy and collection of developer fees by another school district having common territorial jurisdiction.

(4) An amount reflecting the reasonable administrative expenses incurred by the school district in calculating and collecting the fees or other requirements levied by the school district during that period. If the school district has entered into an agreement pursuant to subdivision (a) of Section 53080 of the Government Code whereby the fees or other requirements imposed are collected in whole or in part by a city or county, the amount of administrative expenses calculated under this paragraph shall include any amount paid by the school district to the city or county as reimbursement for that service. In no event shall the total amount of the administrative expenses calculated under this paragraph exceed 3 percent of the fees collected during that period.

(c) Where, pursuant to Section 65995.5 of the Government Code, part or all of the local matching share is funded from the proceeds of a special tax or other charge, rather than from the imposition of a school facilities fee or other requirement, the applicant district shall not be required to pay that amount of the local matching share until those proceeds become available to the district.

(d) For purposes of establishing an estimate of the state project costs pursuant to subdivision (a), the board may estimate the local matching share by using the product of the annual average of the amount that would have resulted from the application of the maximum fee to the square footage of all new construction within the district over the three calendar years preceding the district's project application times the number of years over which the board estimates the fee will be collected by the district pursuant to the project to be funded.

(e) Only those project applications for which, prior to January 1, 1987, the board had made the apportionment for site acquisition and working drawings or the final apportionment for construction of the project shall be subject to the provisions of this chapter in effect prior to that date.

(f) The board may provide a loan to any applicant district in an amount equal to all or a part of the district's obligation under subdivision (b), subject to the requirement that the district pay each month to the board, as reimbursement, an amount equal to the proceeds that would be received by the district from the imposition of the fee described under subdivision (b) until the total amount of the loan has been repaid, together with interest computed pursuant to Section 16065.

(g) The board may make the loan specified in subdivision (f) from any funds available from any source, including, but not limited to, those amounts made available pursuant to Section 16065.

(h) All loan and interest amounts paid to the state pursuant to this

section shall be available for the use of the board in the funding of projects as otherwise provided under this chapter, including, but not limited to, additional loans.

(i) The board is authorized to accept from applicant school districts, as a method of compliance with all or part of the local matching share requirement calculated under this section, land that will be part of the project for which the matching share is to be paid, in which event title to the land shall be conveyed to the state. The board shall determine the value of the land to be used for this purpose, and shall adopt rules and regulations as necessary to otherwise implement this subdivision.

(j) This section shall remain in effect only until such date as any state general obligation bond measure submitted to the voters of this state for their ratification, which measure includes within its purposes the funding of school facilities construction, fails to receive that ratification, and as of that date is repealed.

SEC. 6. Section 17714 of the Education Code is amended to read:

17714. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose will be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and encourage applicants to maintain all buildings under their control, the board shall require the applicant to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the district's general fund for the exclusive purpose of providing moneys for regular maintenance and routine repair of school buildings, according the highest priority to funding for the purpose set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for the term of the lease agreements of all projects constructed under this chapter, a minimum amount equal to or greater than 2 percent of the applicant's General Fund budget for that fiscal year. This paragraph is applicable only to the following districts:

(A) High school districts with average daily attendance greater than 300.

(B) Elementary school districts with average daily attendance greater than 900.

(C) Unified school districts with average daily attendance greater than 1,200.

SEC. 7. Section 17718.5 of the Education Code is amended to read.

17718.5. (a) The Legislature intends for the board to encourage school districts to utilize alternative methods to fund school facilities.

(b) The board shall approve applications pursuant to the requirements of this section that request the board to share a portion

of the cost of projects constructed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth by Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code. The board shall disregard the fact that structures have been constructed in accordance with that act, and neither consider nor approve any application for cost sharing until the time that the applicant school district would have become eligible for approval of its application during the normal process established for considering and approving applications.

(c) The board shall approve applications for cost sharing based on both of the following factors:

(1) Estimates of average daily attendance at the time the application is considered.

(2) The amount of cost sharing requested.

(d) The costs shared by the board shall be an amount equal to the cost that would have been allowed for the project had it been originally approved pursuant to this chapter less 5 percent per year depreciation, exclusive of land, for each year that the project was constructed in advance of the application approval, but no more than the lesser of an amount equal to 75 percent of the allowable cost of the project or the principal amount of any outstanding callable bonds and other debts incurred to finance the project under the Mello-Roos Community Facilities Act of 1982.

(e) If the board utilizes a point system to prioritize applications for funding, the computation of priorities for an application pursuant to this section shall be increased by 4 percent for each year from the date of construction of the project to the date of approval of the cost sharing application.

(f) Section 17705.5 does not apply to any project funded pursuant to this section.

SEC. 8. Section 17719.5 of the Education Code is amended to read:

17719 5 For a school district having an average daily attendance of 2,500 or less for the prior fiscal year, the board may approve, subject to the building cost standards established under this chapter, a supplemental apportionment up to five thousand five hundred dollars ($5,500) for any new construction project, and up to one thousand three hundred twenty dollars ($1,320) for any other project approved under this chapter, as reimbursement for administrative expenses incurred by the district in filing the application for the project. The amount of the supplemental apportionments shall be adjusted in 1990, and every two years thereafter, by the board at its January meeting, which adjustment shall be in an amount equal to the amount of the adjustment for inflation set forth in the statewide cost index for class D construction.

SEC. 9. 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, exclusive of funds that are used by the district to fund a project pursuant to Section 17740.2.

(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. 10. (a) The Legislature recognizes the increasing unmet need for additional school facilities in this state. The Legislature further recognizes that this state does not have the resources necessary to fund all of the school facilities needed.

(b) In 1986, the people of California approved the use of local general obligation bonds secured by the property tax as a method of acquiring or improving real property. The Legislature finds and declares that this method of financing was used for 95 percent of all public schools built in California prior to 1978, and should be encouraged.

SEC. 11. Section 17740.2 is added to the Education Code, to read:

17740.2. Where 75 percent or more of the total cost of a project approved under this chapter, not including the portion of the project cost funded by the district matching share required under Section 17705.5, is to be funded by the applicant district from sources other than any state program administered by the board, the area of the allowable new building construction for that project, and the amount of the building cost allowed for that project under this chapter, shall each be increased by 5 percent, plus 1 percent for each 1 percent by which that local contribution exceeds 75 percent. In addition, any project funded pursuant to this section shall be expedited by permitting the applicant district to certify its eligibility for project funding under the building area and cost standards established under this chapter, subject to the requirement that the district maintain documentation of that eligibility, which shall be subject to subsequent audit as the board may direct.

SEC. 12. Section 17742 of the Education Code is amended to read:

17742. (a) The board, by the adoption of rules, shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. Those rules shall define and provide for the method of determining building areas that are to be included in, in whole or in part, or to be excluded from, the area of existing adequate school construction. Any building to which Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3 of Title 2 does not apply shall not be considered adequate school construction for the purpose of

determining the maximum total building area per attendance unit.

The board may make exceptions to the provisions of this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(b) For the purposes of this chapter, the area of adequate school construction existing in an applicant school district does not include any of the following:

(1) Any portable classroom made available to the district under Chapter 25 (commencing with Section 17785).

(2) In any school operated on a year-round schedule, any building area that has been in continuous use during the preceding five-year period primarily for the operation of any preschool program or programs.

(c) The board shall provide that building area for covered unenclosed space shall be counted as one-third of the actual area. For purposes of this subdivision, "covered unenclosed space" includes, but is not limited to, all of the following:

(1) Open-ended or open-sided covered passages, arcades, shelters, porches, and planting areas.

(2) Open-ended or open-sided covered areas that provide shelter between buildings that are 20 feet or more apart.

(3) Overhangs and sun control devices designed and located to function in lieu of covered walks or other shelters.

(4) Mezzanines used for storage purposes.

(d) The board may make exceptions to this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

SEC. 13. Section 17742.7 of the Education Code is amended to read:

17742.7. (a) For any project application filed or amended on or after January 1, 1987, the area of adequate school construction existing in the applicant school district or, where appropriate, in the attendance area, at the time of application shall be calculated as otherwise provided by this article or, at the request of the district, pursuant to the following formula:

(1) Identify by grade level all teaching stations existing in the school district or, where appropriate, the attendance area, as of January 1, 1986. For the purposes of this section, "teaching station" means any space that was constructed or reconstructed to serve as an area in which to provide pupil instruction.

(2) Determine the maximum pupil loading figure for each grade level pursuant to the district pupil loading standards in effect on January 1, 1986. For the purposes of this section, the "district pupil loading standards" are those pupil loading standards in effect in a school district on January 1, 1986, as a result of actions including, but not necessarily limited to, the execution of a collective bargaining agreement or the adoption of a district policy by the governing board of the school district. In no event may this figure be more than the maximum pupil loading standards established by the board, or less

than three pupil units lower than those maximum pupil loading standards.

(3) Multiply the figure determined under paragraph (2) for each grade level by the number of teaching stations for the particular grade level, as determined under paragraph (1).

(4) Multiply the product determined under paragraph (3) by the maximum area allowance established for that grade level under this article.

(5) The sum of these computations for each grade level, as determined under paragraphs (1) to (4), inclusive, in addition to the area of existing adequate school construction as calculated under Section 17740 for all school construction completed after January 1, 1986, in the district or, where appropriate, the attendance area, shall be the total area of adequate school construction existing in the district or attendance area pursuant to this formula.

(b) For purposes of this section, a school district that is participating in a class size reduction program set forth in this code shall use the pupil loading standard established pursuant to that program.

SEC. 14. Section 17746.7 of the Education Code is amended to read:

17746.7. Notwithstanding any other provision of law, the determination of the area of allowable new building construction for any project for an applicant school district for which original construction commenced on or after January 1, 1987, shall be made on the basis of 107 percent of the area that would otherwise be determined for that purpose under this chapter, calculated to the nearest whole number.

SEC. 15. Section 17749 of the Education Code is amended to read:

17749. (a) The board shall require, as a condition of providing funding for any project under this chapter, that, for any facilities for kindergarten or any of grades 1 to 12, inclusive, or for any facilities for special education or continuation high school purposes, at least 30 percent of allowable new building construction for classrooms under the project be utilized for relocatable structures.

(b) The board may reduce the percentage requirement set forth in subdivision (a), as to any applicant, in the event that the quantity of relocatable structures necessary to comply with those requirements is unavailable from the manufacturers of those structures.

(c) The board may reduce or eliminate the percentage requirements set forth in subdivision (a), as to any applicant, under either of the following circumstances:

(1) Where the board finds that special conditions of terrain, climate, or unavailability of space within the attendance area make the use of relocatable structures impractical or inappropriate.

(2) Under the condition that, as the result of a future project for which the district receives funding under this chapter, located on the same schoolsite on which the current project is located, at least 30

percent of total building construction for classrooms on that schoolsite will be utilized for relocatable structures.

(d) Relocatable structures acquired by an applicant school district up to two years preceding the final approval by the board of the project application submitted by the district shall apply to the percentage requirements set forth in subdivision (a). The cost of acquiring those structures shall apply to fulfilling the district's funding requirement under Section 17705.5.

(e) Whenever at least 10 percent of the allowable new building construction contained in an application is to be utilized for relocatable structures, an additional three square feet of building area for each pupil to be housed under the approved project shall be allowed.

SEC. 16. Section 39140 of the Education Code is amended to read:

39140. (a) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or, if the estimated cost exceeds twenty thousand dollars ($20,000), the reconstruction or alteration of or addition to any school building, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a school district to perform work with its own forces in excess of the limitations set forth in Sections 39640 and 39649. In calculating the cost of any project of reconstruction or alteration of, or addition to, any school building for the purpose of determining the applicability of the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, the Department of General Services shall not include, as an element of that cost, any expenses of air-conditioning equipment or insulation materials for that building, or of installing the equipment or materials.

(b) Whenever repairs due to fire damage, not including any damage caused by wind or earthquake, must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original work under then existing rules, regulations, and building standards may be used without modification, providing all other provisions of this article are carried out.

(c) Notwithstanding any other provision of law, no school district shall be authorized to construct or reconstruct any school building, regardless of the source of funding, unless and until one of the following criteria has been met:

(1) The district architect has certified that the project satisfies the construction cost and allowable area standards prescribed by Chapter 22 (commencing with Section 17700) of Part 10.

(2) The governing board of the district has, by resolution,

indicated the agreement of the district that any school building construction or reconstruction that exceeds those construction cost and allowable area standards or any allowable building area computed for an attendance area pursuant to Section 17741 shall, in the event of the district's subsequent application for state funding for school facility construction, be deducted from the allowable building area for which the district would otherwise have been eligible, which restriction shall not be subject to waiver or exception, as may otherwise be provided by law, including, but not limited to, Section 17742.

If it is determined that, for any reason, a school district failed to comply with the requirement of this section, the district shall not be eligible for any additional building area pursuant to Section 17749 and may be denied any time priority established for the particular project pursuant to Section 17716.

SEC. 17. Section 39304.5 of the Education Code is amended to read:

39304.5. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure which is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 39140) and Article 6 (commencing with Section 39210). The governing board of a school district may request and obtain from the State Allocation Board authority for use of any building not meeting the structural standards prescribed by Article 3 (commencing with Section 39140) until September 1, 1990. After September 1, 1990, the governing board of a school district may request and obtain from the State Allocation Board a one-time waiver of Article 3 (commencing with Section 39140) for a maximum of three years upon presentation of satisfactory evidence to the State Allocation Board that the district is proceeding in a timely manner with a program that will eliminate the need for the leased facilities within that time period. A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 39214, shall not be considered to be a "school building" within the meaning of Section 39141.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the

school district pursuant to a lease or a permit.

"Relocatable structure" is any structure that is designed to be relocated.

SEC. 18. Section 15492 is added to the Government Code, to read:

15492. (a) The Department of General Services shall assign one full-time position within the Office of Local Assistance to the performance of the following functions:

(1) Providing advisory assistance to school districts regarding the process of site acquisition for projects for which the State Allocation Board has approved funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(2) Formulating recommendations for administrative or statutory revision to the manner in which school sites are acquired under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code, and submitting those recommendations to the State Allocation Board.

(b) The Department of General Services shall establish a screening unit or other mechanism within the Office of Local Assistance to ensure that the office responds in a timely manner to any inquiry regarding the status of an application for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(c) The requirements set forth in this section shall not increase the staffing level of the Office of Local Assistance, as that staffing level existed on the operative date of this section.

SEC. 19. Section 53080 of the Government Code is amended to read:

53080. (a) (1) The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any development project within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities, subject to any limitations set forth in Chapter 4.9 (commencing with Section 65995) of Division 1 of Title 7 This fee, charge, dedication, or other requirement may be applied to construction only as follows:

(A) To new commercial and industrial construction. The chargeable covered and enclosed space of a commercial or industrial development project, as defined in Section 65995, shall not be deemed to include the square footage of any structure existing on the site of that development project as of the date the first building permit is issued for any portion of that development project.

(B) To new residential construction.

(C) To other residential construction, only if the resulting increase in assessable space, as defined in Section 65995, exceeds 500 square feet. The calculation of the "resulting increase in assessable space" for this purpose shall reflect any decrease in assessable space in the same residential structure that also results from that construction. Where authorized under this paragraph, the fee, charge, dedication, or other requirement is applicable to the total

resulting increase in assessable space.

(2) For purposes of this section, "development project" means any project undertaken for the purpose of development, and includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

(3) For purposes of this section, "construction or reconstruction of school facilities" does not include any item of expenditure for any of the following:

(A) The regular maintenance or routine repair of school buildings and facilities.

(B) The inspection, sampling, analysis, encapsulation, or removal of asbestos-containing materials, except where incidental to school facilities construction or reconstruction for which the expenditure of fees or other consideration collected pursuant to this section is not prohibited.

(C) The purposes of deferred maintenance described in Section 39618 of the Education Code.

(4) The appropriate city or county may be authorized, pursuant to contractual agreement with the governing board, to collect and otherwise administer, on behalf of the school district, any fee, charge, dedication, or other requirement levied under this subdivision. In the event of any agreement authorizing a city or county to collect that fee, charge, dedication, or other requirement in any area within the school district, the certification requirement set forth in subdivision (b) or (c), as appropriate, is deemed to be complied with as to any residential development project within that area upon receipt by that city or county of payment of the fee, charge, dedication, or other requirement imposed on that project.

(5) Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district.

(b) No city or county, whether general law or chartered, may issue a building permit for any development absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a), or of the district's determination that the fee, charge, dedication, or other requirement does not apply to the development project.

(c) If, pursuant to subdivision (c) of Section 53080.1, the governing board specifies that the fee, charge, dedication, or other

requirement levied under subdivision (a) is subject to the restriction set forth in subdivision (a) of Section 66007, the restriction set forth in subdivision (b) of this section does not apply. In that event, however, no city or county, whether general law or chartered, may conduct a final inspection or issue a certificate of occupancy, whichever is later, for any residential development project absent certification by the appropriate school district of compliance by that development project with any fee, charge, dedication, or other requirement levied by the governing board of that school district pursuant to subdivision (a).

(d) Neither subdivision (b) nor (c) shall apply to a city or county as to any fee, charge, dedication, or other requirement as described in subdivision (a), or as to any increase in that fee, charge, dedication, or other requirement, except upon the receipt by that city or county of notification of the adoption of, or increase in, the fee or other requirement in accordance with subdivision (c) of Section 53080.1.

SEC. 20. Section 53080.1 is added to the Government Code, to read:

53080.1. (a) Any resolution adopting or increasing a fee, charge, dedication, or other requirement pursuant to Section 53080, for application to residential, commercial, or industrial development, shall be enacted in accordance with Chapter 5 (commencing with Section 66000) of Division 1 of Title 7, with Section 54994.1, and with the procedures for mailed notice set forth in Section 54992. The adoption, increase, or imposition of any fee, charge, dedication, or other requirement pursuant to Section 53080 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code. The adoption of, or increase in, the fee, charge, dedication, or other requirement shall be effective no sooner than 60 days following the final action on that adoption or increase, except as specified in subdivision (b).

(b) Without following the procedure otherwise required for adopting or increasing a fee, charge, dedication, or other requirement, the governing board of a school district may adopt an urgency measure as an interim authorization for a fee, charge, dedication, or other requirement, or increase in a fee, charge, dedication, or other requirement, where necessary to respond to a current and immediate threat to the public health, welfare, or safety. The interim authorization shall require a four-fifths vote of the governing board for adoption, and shall contain findings describing the current and immediate threat to the public health, welfare, or safety. The interim authorization shall have no force or effect on and after a date 30 days after its adoption. After notice and hearing in accordance with subdivision (a), the governing board, upon a four-fifths vote of the board, may extend the interim authority for an additional 30 days. Not more than two extensions may be granted.

(c) Upon adopting or increasing a fee, charge, dedication, or other requirement pursuant to subdivision (a) or (b), the school district

shall transmit a copy of the resolution to each city and each county in which the district is situated, accompanied by all relevant supporting documentation and a map clearly indicating the boundaries of the area subject to the fee, charge, dedication, or other requirement. The school district governing board shall specify, pursuant to that notification, whether or not the collection of the fee or other charge is subject to the restriction set forth in subdivision (a) of Section 66007.

(d) Any party on whom a fee, charge, dedication, or other requirement has been directly imposed pursuant to Section 53080 may protest the establishment or imposition of that fee, charge, dedication, or other requirement in accordance with Section 66009, except that the procedures set forth in Section 66008 are deemed to apply, for this purpose, to commercial and industrial development, as well as to residential development.

(e) In the case of any commercial or industrial development, the following procedures shall also apply:

(1) The school district governing board shall, in the course of making the findings required under subdivisions (a) and (b) of Section 66001, do all of the following:

(A) Make the findings on either an individual project basis or on the basis of categories of commercial or industrial development. Those categories may include, but are not limited to, the following uses: office, retail, transportation, communications and utilities, light industrial, heavy industrial, research and development, and warehouse.

(B) Conduct a study to determine the impact of the increased number of employees anticipated to result from the commercial or industrial development upon the cost of providing school facilities within the district. For the purpose of making that determination, the study shall utilize employee generation estimates that are based on commercial and industrial factors within the district, as calculated on either an individual project or categorical basis, in accordance with subparagraph (A). The governing board shall take into account the results of that study in making the findings described in this subdivision.

(2) In addition to any other requirement imposed by law, in the case of any development project against which a fee, charge, dedication, or other requirement is to be imposed pursuant to Section 53080 on the basis of a category of commercial or industrial development, as described in paragraph (1), the governing board shall provide a process that permits the party against whom the fee, charge, dedication, or other requirement is to be imposed the opportunity for a hearing to appeal that imposition. The grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the fee, charge, dedication, or other requirement is to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project. The

party appealing the imposition of the fee, charge, dedication, or other requirement shall bear the burden of establishing that the fee, charge, dedication, or other requirement is improper.

SEC. 21. Section 53080.2 is added to the Government Code, to read:

53080.2. (a) In the event the fee authorized pursuant to Section 53080 is levied by two nonunified school districts having common territorial jurisdiction, in a total amount that exceeds the maximum fee authorized under Section 65995, the fee revenue for the area of common jurisdiction shall be distributed in the following manner:

(1) The governing boards of the affected school districts shall enter into an agreement specifying the allocation of fee revenue and the duration of the agreement. A copy of that agreement shall be transmitted by each district to the State Allocation Board.

(2) In the event the affected school districts are unable to reach an agreement pursuant to paragraph (1), the districts shall jointly submit the dispute to a three-member arbitration panel composed of one representative chosen by each of the districts and one representative chosen jointly by both of the districts. The decision of the arbitration panel shall be final and binding upon both districts for a period of three years.

(b) For purposes of the calculation of the district matching share under Section 17705.5 of the Education Code, the fee revenue allocated to the applicant district pursuant to subdivision (a) is deemed to be, as to that district, the maximum fee authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970) of Division 2 of Title 7, or both.

SEC. 22. Section 53080.3 is added to the Government Code, to read:

53080.3. (a) Any school district that has imposed or, subsequent to the operative date of this section, imposes, any fee, charge, dedication, or other requirement under Section 53080 against any development project that subsequently meets the description set forth in subdivision (b), shall repay or reconvey, as appropriate, that fee, charge, dedication, or other requirement to the person or persons from whom that fee, charge, dedication, or other requirement was collected, less the amount of the administrative costs incurred in collecting and repaying the fee, charge, dedication, or other requirement.

(b) This section applies to any development project for which the building permit, including any extensions, expires on or after January 1, 1990, without the commencement of construction, as defined in subdivision (c) of Section 65995.

(c) Where the amount of a local matching share required of any school district pursuant to Section 17705.5 of the Education Code includes the amount of a fee or other consideration imposed against a development project that is entitled to reimbursement under this section, the local matching share shall be reduced by the amount of that fee or other consideration.

SEC. 23. Section 53080.6 is added to the Government Code, to read:

53080.6. (a) A fee, charge, dedication, or other requirement authorized under Section 53080, whether or not allowable under Chapter 6 (commencing with Section 66010) of Division 1 of Title 7, may not be applied to the reconstruction of any residential, commercial, or industrial structure that is damaged or destroyed as a result of a disaster, except to the extent the square footage of the reconstructed structure exceeds the square footage of the structure that was damaged or destroyed. That square footage comparison shall be made, in the case of a commercial or industrial structure, on the basis of chargeable covered and enclosed space, as defined in Section 65995, or, in the case of a residential structure, on the basis of assessable space, as defined in Section 65995.

(b) The following definitions apply for the purposes of this section:

(1) "Disaster" means a fire, earthquake, landslide, mudslide, flood, tidal wave, or other unforeseen event that produces material damage or loss.

(2) "Reconstruction" means the construction of property that replaces, and is equivalent in kind to, the damaged or destroyed property.

SEC. 24. Section 65974.5 is added to the Government Code, to read:

65974.5. Notwithstanding any other provision of this chapter, the governing board of any school district that receives funds that are collected pursuant to this chapter under a local ordinance, resolution, or other regulation in existence on September 1, 1986, may expend those funds for any of the construction or reconstruction purposes authorized under Section 53080, where the governing board has first held a public hearing on the subject of the proposed expenditure.

SEC. 25. Section 65995 of the Government Code is amended to read:

65995. (a) Except for a fee, charge, dedication, or other requirement authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), no fee, charge, dedication, or other requirement shall be levied by the legislative body of a local agency against a development project, as defined in Section 53080, for the construction or reconstruction of school facilities.

(b) In no event shall the amount of any fees, charges, dedications, or other requirements authorized under Section 53080, or pursuant to Chapter 4.7 (commencing with Section 65970), or both, exceed the following:

(1) One dollar and fifty cents ($1.50) per square foot of assessable space, in the case of any residential development "Assessable space," for this purpose, means all of the square footage within the perimeter of a residential structure, not including any carport, walkway, garage, overhang, patio, enclosed patio, detached accessory

structure, or similar area. The amount of the square footage within the perimeter of a residential structure shall be calculated by the building department of the city or county issuing the building permit, in accordance with the standard practice of that city or county in calculating structural perimeters.

(2) In the case of any commercial or industrial development, twenty-five cents ($0.25) per square foot of chargeable covered and enclosed space. "Chargeable covered and enclosed space," for this purpose, means the covered and enclosed space determined to be within the perimeter of a commercial or industrial structure, not including any storage areas incidental to the principal use of the development, garage, parking structure, unenclosed walkway, or utility or disposal area. The determination of the chargeable covered and enclosed space within the perimeter of a commercial or industrial structure shall be made by the building department of the city or county issuing the building permit, in accordance with the building standards of that city or county.

(3) The amount of the limits set forth in paragraphs (1) and (2) shall be increased in 1990, and every two years thereafter, according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting, which increase shall be effective as of the date of that meeting. The State Allocation Board shall not raise the amount of the district matching share calculated under Section 17705.5 of the Education Code, as a result of the increase under this paragraph, until at least 90 days after the date of that increase.

(c) (1) Notwithstanding any other provision of law, during the term of any contract entered into between a subdivider or builder and a school district, city, county, or city and county, whether general law or chartered, on or before January 1, 1987, that requires the payment of a fee, charge, or dedication for the construction of school facilities as a condition to the approval of residential development, neither Section 53080 nor this chapter applies to that residential development.

(2) Any development project for which a final map was approved and construction had commenced on or before September 1, 1986, is subject to only the fee, charge, dedication, or other requirement prescribed in any local ordinance in existence on that date and applicable to the project.

(d) For purposes of Section 53080 and this chapter, "residential, commercial, or industrial development" does not include any facility used exclusively for religious purposes that is thereby exempt from property taxation under the laws of this state, any facility used exclusively as a private full-time day school as described in Section 48222 of the Education Code, or any facility that is owned and occupied by one or more agencies of federal, state, or local government. In addition, "commercial or industrial development" includes, but is not limited to, any hotel, inn, motel, tourist home, or other lodging for which the maximum term of occupancy for guests

does not exceed 30 days, but does not include any residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code.

(e) The Legislature finds and declares that the subject of the financing of school facilities with development fees is a matter of statewide concern. For this reason the Legislature hereby occupies the subject matter of mandatory development fees and other development requirements for school facilities finance to the exclusion of all local measures on the subject.

(f) Nothing in this section shall be interpreted to limit or prohibit the use of Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 to finance the construction or reconstruction of school facilities.

SEC. 26. Section 65995.1 of the Government Code is amended to read:

65995.1. (a) Notwithstanding any other provision of law, as to any development project for the construction of senior citizen housing, as described in Section 51.3 of the Civil Code, a residential care facility for the elderly as described in subdivision (j) of Section 1569.2 of the Health and Safety Code, or a multilevel facility for the elderly as described in paragraph (9) of subdivision (d) of Section 15432, any fee, charge, dedication, or other form of requirement that is levied under Section 53080 may be applied only to new construction, and is subject to the limits and conditions applicable under subdivision (b) of Section 65995 in the case of commercial or industrial development.

(b) Any development project against which school facilities fees or other requirements have been levied in accordance with the limit set forth in subdivision (a) may be converted to any use other than those uses described in the statutes cited in that subdivision only with the approval of the city or county that issued the building permit for the project. That approval shall not be granted absent certification by the appropriate school district that payment has been made on the part of the development project at the rate of the school facilities fee, charge, dedication, or other form of requirement applied by the district under Section 53080 to residential development as of the date of conversion, less the amount of any school facilities fees or other requirements paid on the part of the project in accordance with the limits set forth in subdivision (a).

SEC. 27. Section 65995.2 is added to the Government Code, to read:

65995.2. (a) Notwithstanding any other provision of law, the imposition of any fee, charge, dedication, or other requirement authorized under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, against any manufactured home or mobilehome that is located within a mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which residence is limited to older persons, as defined pursuant to the federal Fair Housing Amendments Act of 1988, is subject to the

limits and conditions that are applicable under subdivision (b) of Section 65995 in the case of commercial and industrial development.

(b) Any mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, in which school facilities fees, charges, dedications, or other requirements have been imposed against one or more manufactured homes or mobilehomes in accordance with the limit set forth in subdivision (a) may subsequently choose to permit the residence of persons other than older persons, in which event it shall so notify the appropriate school district and city or county. As a condition of the first sale, subsequent to that notification, of each manufactured home or mobilehome in the mobilehome park, or subdivision, cooperative, or condominium for mobilehomes, payment shall be made to the school district in the amount of the school facilities fee or other requirement applied by the district under Section 53080, or Chapter 4.7 (commencing with Section 65970), or both, to residential development as of the date of that sale, less the amount of any school facilities fees, charges, dedications, or other requirements imposed against that manufactured home or mobilehome in accordance with the limits described in subdivision (a). Any prospective purchaser of a manufactured home or mobilehome that is subject to the requirement set forth in this subdivision shall be given written notice of the existence of that requirement by the seller prior to entering into any contract for that purchase.

(c) Compliance on the part of any manufactured home or mobilehome with any additional fee or other requirement applied by the school district pursuant to subdivision (b), and certification by the appropriate school district of that compliance, shall be required as a condition of the following, as applicable:

(1) The close of escrow of the first sale of the manufactured home or mobilehome following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b) and the sale or transfer of the manufactured home or mobilehome is subject to escrow as provided in Section 18035 or 18035.2 of the Health and Safety Code.

(2) The approval of the manufactured home or mobilehomes for initial occupancy pursuant to Section 18551 or 18613 of the Health and Safety Code following the notice required by subdivision (b), where the manufactured home or mobilehome is to be located, installed, or occupied in a mobilehome park that has chosen to permit the residence of persons other than older persons pursuant to subdivision (b), in the event that paragraph (1) does not apply.

SEC. 27.5. Section 65996 of the Government Code is amended to read:

65996. The following provisions shall be the exclusive methods of mitigating environmental effects related to the adequacy of school facilities when considering the approval or the establishment of

conditions for the approval of a development project, as defined in Section 53080, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code:

(a) Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code.

(b) Chapter 25 (commencing with Section 17785) of Part 10 of the Education Code.

(c) Chapter 28 (commencing with Section 17870) of Part 10 of the Education Code.

(d) Article 2.5 (commencing with Section 39327) of Chapter 3 of Part 23 of the Education Code.

(e) Section 53080 of the Government Code.

(f) Chapter 2.5 (commencing with Section 53311) of Division 2 of Title 5 of the Government Code.

(g) Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the Government Code.

No public agency shall, pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code or Division 2 (commencing with Section 66410) of this code, deny approval of a project on the basis of the adequacy of school facilities.

SEC. 28. Section 66007 of the Government Code is amended to read:

66007. (a) Except as otherwise provided in subdivision (b), any local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which

the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the initial holder of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the building permit holder as grantor.

(3) The contract may require the building permit holder to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, has the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a "proposed construction schedule or plan" be adopted include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

(g) 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. 29. Section 66413.7 is added to the Government Code, to read:

66413.7. Whenever there is consideration of an area within a development for a public school site, the advisory agency shall give the State Department of Education written notice of the proposed site. If the site is within the distance of an airport runway as described in Section 39005 of the Education Code, the department shall notify the State Department of Transportation as required by the section. The State Department of Education shall investigate the proposed site and, within 35 days after receipt of the notice, shall submit to the advisory agency and school district a written report and its recommendations concerning the site.

The governing board of the school district shall not acquire title to the property until the report of the State Department of Education has been received. If the report does not favor the acquisition of the property for a schoolsite, the governing board shall not acquire title to the property until 30 days after the department's report has been read at a public hearing duly called after 10 days' notice published once in a newpaper of general circulation within the school district or, if there is no newspaper of this type, in a newspaper of general circulation within the county in which the property is located.

SEC. 30. 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 that 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 escrowholder.

(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 certificate of 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 that reflects the commission charged by the dealer to the seller need not be disclosed to the buyer.

(2) The escrow agent, upon receipt of notification from the dealer that the seller has accepted the buyer's offer to purchase and receipt of mutually endorsed escrow instructions, 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 that is subject to inspection pursuant to Section 18613, and for which it is stated, on the face of the document certifying or approving occupancy or installation, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 53080 of the Government Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

(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) Upon opening escrow on a used manufactured home or mobilehome which is subject to local property taxation, and subject to registration under this part, the escrow officer may forward to the tax collector of the county in which the used manufactured home or mobilehome is located, a written demand for a tax clearance

certificate, if no liability exists, or a conditional tax clearance certificate if a tax liability exists, to be provided on a form prescribed by the office of Controller. The conditional tax clearance certificate shall state the amount of the tax liability due, if any, and the final date that amount may be paid out of the proceeds of escrow before a further tax liability may be incurred.

(1) Within five working days of receipt of the written demand for a conditional tax clearance certificate or a tax clearance certificate, the county tax collector shall forward the conditional tax clearance certificate or a tax clearance certificate showing no tax liability exists to the requesting escrow officer. In the event the tax clearance certificate's or conditional tax clearance certificate's final due date expires within 30 days of date of issuance, an additional conditional tax clearance certificate or a tax clearance certificate shall be completed which has a final due date of at least 30 days beyond the date of issuance.

(2) If the tax collector on which the written demand for a tax clearance certificate or a conditional tax clearance certificate was made fails to comply with that demand within 30 days from the date the demand was mailed, the escrow officer may close the escrow and submit a statement of facts certifying that the written demand was made on the tax collector and the tax collector failed to comply with that written demand within 30 days. This statement of facts may be accepted by the department in lieu of a conditional tax clearance certificate or a tax clearance certificate, as prescribed by subdivision (a) of Section 18092.7, and the transfer of ownership may be completed

(3) The escrow officer may satisfy the terms of the conditional tax clearance certificate by paying the amount of tax liability shown on the form by the tax collector out of the proceeds of escrow on or before the date indicated on the form and by certifying in the space provided on the form that all terms and conditions of the conditional tax clearance certificate have been complied with.

(n) 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. 31. Section 18035.2 of the Health and Safety Code is amended to read:

18035.2 (a) For every sale by a dealer of a new or used manufactured home or mobilehome to be installed on a foundation system pursuant to Section 18551, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase, and provide a statement of fact complying with subdivision (b) of Section 18035.1, contemporaneous with or prior to the receipt of any cash or cash equivalent from the buyer and shall establish an escrow account with

an escrow agent. The escrow shall not be subject to the provisions of Section 18035.

(b) For every sale by a dealer of a new manufactured home or mobilehome installed or to be installed on a foundation system pursuant to Section 18551, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) That, in the alternative:

(A) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisified by payment from the escrow account.

(B) That 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 new or used manufactured home or mobilehome that is subject to inspection pursuant to Section 18551, and for which it is stated, on the face of the document certifying or approving occupancy, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 53080 of the Government Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

SEC. 32. The State Allocation Board shall determine the extent to which the five-year plans for construction and rehabilitation of school facilities submitted by school districts in accordance with Section 17717.5 of the Education Code are appropriate for use in determining the eligibility of those districts as applicants for project funding under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code. No later than July 1, 1990, the State Allocation Board shall report to the Legislature the results of its findings, together with its recommendations, if any, for statutory revision.

SEC. 33. The State Allocation Board shall develop, in a timely manner, a more accurate method of making enrollment projections under Chapter 22 (commencing with Section 17700) of Part 10 of the Education Code for rapid residential growth school districts. No later than July 1, 1990, the State Allocation Board shall submit a report to the Legislature setting forth the method developed pursuant to this

section.

SEC. 34. The Legislature finds and declares that paragraph (2) of subdivision (a) of Section 53080 of the Government Code and paragraph (1) of subdivision (b) of Section 65995 of the Government Code, as set forth in this act, are declaratory of existing law.

SEC. 35. The Legislature finds and declares that the system of school facilities funding addressed by this act is in vital need of additional sources of revenue. Accordingly, it is the intent of the Legislature in the 1989–90 Regular Session to approve a state general obligation bond measure in the amount of one billion dollars ($1,000,000,000) to fund the construction and reconstruction of public school facilities, and to submit that bond measure to the voters of this state for their approval at the primary election to be held June 5, 1990

SEC. 36. 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 costs of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary clarifying and other revisions to the provisions of law authorizing the collection of developer fees by school districts, which provisions are currently in effect, it is necessary that this act take effect immediately.

CHAPTER 1210

An act to add Section 13823.13 to the Penal Code, relating to crimes.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 13823.13 is added to the Penal Code, to read:

13823.13. (a) The Office of Criminal Justice Planning shall develop a course of training for qualified health care professionals

relating to the examination and treatment of victims of sexual assault. In developing the curriculum for the course, the Office of Criminal Justice Planning shall consult with health care professionals and appropriate law enforcement agencies. The Office of Criminal Justice Planning shall also obtain recommendations from the same health care professionals and appropriate law enforcement agencies on the best means to disseminate the course of training on a statewide basis.

(b) The training course developed pursuant to subdivision (a) shall be designed to train qualified health care professionals to do all of the following:

(1) Perform a health assessment of victims of sexual assault in accordance with any applicable minimum standards set forth in Section 13823.11.

(2) Collect and document physical and laboratory evidence in accordance with any applicable minimum standards set forth in Section 13823.11.

(3) Provide information and referrals to victims of sexual assault to enhance the continuity of care of victims.

(4) Present testimony in court.

(c) As used in this section, "qualified health care professional" means a physician and surgeon currently licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a nurse currently licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who works in consultation with a physician and surgeon or who conducts examinations described in Section 13823.9 in a general acute care hospital or in the office of a physician and surgeon.

(d) As used in this section, "appropriate law enforcement agencies" may include, but shall not be limited to, the Attorney General of the State of California, any district attorney, and any agency of the State of California expressly authorized by statute to investigate or prosecute law violators.

SEC. 2. Section 13823.13 of the Penal Code shall be implemented to the extent that funds are available to the Office of Criminal Justice Planning for this purpose.

CHAPTER 1211

An act relating to technology.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) It is important to provide persons from all backgrounds with opportunities to pursue training and educational programs consistent with the present and future needs of high technology industries.

(b) Incentives to stimulate increased collaboration between California's educational institutions and the private sector industrial, commercial, and labor interests, are essential to the development of a pool of skilled high technology workers.

SEC. 2. (a) The Legislature requests the California Council on Science and Technology, as established in accordance with Resolution Chapter 148 of the Statutes of 1988, to study the relationship between the training and educational needs of California's high technology industries and the training and educational programs offered by California's educational institutions. In conducting this study, the council is requested, if appropriate, and to the extent resources permit, to do all of the following:

(1) Conduct an assessment of current high technology education and training programs, steps to increase and enhance existing programs, new initiatives and programs necessary to promote high technology, and methods to coordinate and target high technology education and training programs to changing market opportunities in business and industry.

(2) Determine the specific high technology occupational fields in which technical education and training are needed, and advise California's educational institutions of its findings.

(3) Identify economic areas and high technology industries in need of technical education and training, and research and development critical to economic development.

(4) Work cooperatively with the Superintendent of Public Instruction to identify the skills prerequisite to the high technology education and training programs available in institutions of higher education.

(5) Work cooperatively with the Department of Commerce to identify high technology education and training needs of existing California businesses and businesses with the potential to locate in California.

(6) Identify methods of increasing private sector participation in, and contributions toward, the development of California high

technology education and training programs.

(7) Assess the need for and feasibility of establishing one or more comprehensive entrepreneurial education programs or institutes at the public institutions of higher education of this state, with the goals of training students in entrepreneurial management and providing students with skills and knowledge on how to create and operate businesses.

(b) It is the intent of the Legislature that, in conducting the study described in subdivision (a), the council act in an advisory capacity only, and not exercise any authority over the actual functions of academic planning, curriculum development, and degree program development, which functions are to be carried out by the institutions of higher education.

SEC. 3. The California Council on Science and Technology is requested to submit the study described in Section 2, no later than July 1, 1992, to the Legislature, the Governor, the State Board of Education, the Superintendent of Public Instruction, the Board of Governors of the California Community Colleges, the Board of Trustees of the California State University, the Regents of the University of California, and the California Postsecondary Education Commission.

CHAPTER 1212

An act to amend Section 202 of the Business and Professions Code, relating to the Department of Consumer Affairs.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. Section 202 of the Business and Professions Code is amended to read:

202. (a) Upon proper presentation of claims by the department to the State Controller, the State Controller shall draw his or her warrant against any of the funds of any one of the boards to cover its share of the estimated administrative expenses of the department. The fund of one board shall not be used to pay the expenses of any other board.

(b) Nothing in this section or in Section 401 shall prohibit the transfer of funds for a release time bank of any board, commission, or bureau of the department pursuant to a memorandum of understanding on the same terms and conditions applicable to other state agencies.

CHAPTER 1213

An act to amend Section 1798.26 of the Civil Code, to add Section 6254.1 to the Government Code, to amend Section 18081 of the Health and Safety Code, and to amend Sections 1810, 1810.7, 4150, 4150.2, 38040, 38041, and 38075 of, and to add Sections 1808.21, 1808.22, 1808.45, 1808.46, 1808.47, 1810.2, and 40000.61 to, the Vehicle Code, relating to privacy.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature hereby finds and declares that:

(a) Section 1 of Article I of the California Constitution guarantees the right to privacy.

(b) In order for individuals to be able to exercise their right to privacy, they must be able to choose when to release personal information, and to whom, and reasonable laws requiring the individual to surrender control should be enacted only when it is deemed absolutely necessary for society's welfare.

(c) The personal privacy and security of one's home is fundamental to this right of privacy.

(d) In order to protect individuals from unwanted invasions of their homes, the Legislature has enacted this act.

(e) Nothing in this act shall be construed to affect any contractual or other obligation of an applicant or insured to provide valid, accurate, and timely information as to their home address to their insurer or on any application for an insurance policy.

(f) Nothing in this act shall be construed to authorize any person to request confidential treatment as to their home address for any fraudulent or criminal purpose.

SEC. 2. 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 may provide for a 10-day delay in the release of the requested information. 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. 3. Section 6254.1 is added to the Government Code, to read:

6254.1. (a) Except as provided in Section 6254.7, nothing in this chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

SEC. 4. Section 18081 of the Health and Safety Code is amended to read:

18081. (a) Any person may request, and the department shall furnish, information regarding the current registration and title status of a manufactured home, mobilehome, commercial coach, truck camper, or floating home The department shall provide forms for these requests, shall establish a standard format for providing the information, and may charge fees to pay the cost of furnishing this information.

(b) Upon receipt of a properly executed request for information and the payment of prescribed fees, the department shall provide the information within five working days by first-class mail to the address indicated on the request. The department may adopt procedures for providing the information by electronic facsimile in addition to mailing that information.

(c) Notwithstanding subdivisions (a) and (b), the home address of any person appearing in the information on current registration and title status maintained by the department is confidential if the person requests confidentiality of that information, and shall not be disclosed to any person, except a court, a law enforcement agency, the State Board of Equalization, or any governmental agency to which, under any provision of law, information is required to be furnished from records maintained by the department.

(d) Any person requesting confidentiality of his or her home address shall provide the department with an alternate address which is not confidential and which will be open to public inspection. The person requesting confidentiality shall declare to the department, under penalty of perjury, that the alternate address provided is a valid, existing and accurate mailing address and shall consent to receive service of process pursuant to subdivision (b) of Section 415.20 and subdivision (a) of Section 415.30 and Section 416 90 of the Code of Civil Procedure at the alternate address.

SEC. 5. Section 1808.21 is added to the Vehicle Code, to read:

1808.21. (a) Any residence address in any record of the department is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other government agency, or as authorized in Section 1808.22.

(b) Release of any mailing address or part thereof in any record of the department may be restricted to a release for purposes related to the reasons for which the information was collected, including, but not limited to, the assessment of driver risk, or ownership of vehicles or vessels. This restriction does not apply to a release to a court, a law enforcement agency, or other governmental agency, or a person who has been issued a requester code pursuant to Section 1810.2.

(c) Any person providing the department with a mailing address shall declare, under penalty of perjury, that the mailing address is a valid, existing, and accurate mailing address and shall consent to receive service of process pursuant to subdivision (b) of Section 415.20, subdivision (a) of Section 415.30, and Section 416.90 of the Code of Civil Procedure at the mailing address.

SEC. 6. Section 1808.22 is added to the Vehicle Code, to read:

1808.22. (a) Section 1808 21 does not apply to a financial institution licensed by the state or federal government to do business in the State of California which states under penalty of perjury that it has obtained a written waiver of Section 1808.21 signed by the individual whose address is requested, or to providing the address of any person who has entered into an agreement held by that institution prior to July 1, 1990, so long as that agreement remains in effect.

(b) Section 1808.21 does not apply to an insurance company licensed to do business in California when the company, under penalty of perjury, requests the information for the purpose of obtaining the address of another motorist or vehicle owner involved in an accident with their insured, or requests the information on an individual who has signed a written waiver of Section 1808.21 or the individuals insured under a policy if a named insured of that policy has signed a written waiver.

SEC. 7. Section 1808.45 is added to the Vehicle Code, to read:

1808.45. The willful, unauthorized disclosure of information from any department record to any person, or the use of any false representation to obtain information from a department record or any use of information obtained from any department record for a purpose other than the one stated in the request or the sale or other distribution of the information to a person or organization for purposes not disclosed in the request is a misdemeanor, punishable by a fine not exceeding five thousand dollars ($5,000) or by imprisonment in the county jail not exceeding one year, or both fine and imprisonment.

SEC. 8. Section 1808.46 is added to the Vehicle Code, to read.

1808.46. Any insurance company, licensed financial institution, person holding a requester code or agent who directly or indirectly

obtains information from the department files using false representations or distributes restricted or confidential information to any person or uses the information for a reason not authorized or specified in a requester code application is liable to the department for civil penalties up to one hundred thousand dollars ($100,000) and shall have its requester code privileges suspended or revoked for a period of up to five years. The regulatory agencies having jurisdiction over any licensed person receiving information pursuant to Section 1808.21, 1808.22, or 1810.2 shall implement procedures to review the procedures of any licensee which receives information to ensure compliance with the limitations on the use of information as part of the agency's regular oversight of the licensees. The agency shall report noncompliance to the department.

SEC. 9. Section 1808.47 is added to the Vehicle Code, to read:

1808.47. Any person who has access to confidential or restricted information from the department shall establish procedures to protect the confidentiality of those records. If confidential or restricted addresses are released to any agent of a person authorized to obtain restricted addresses as provided in Section 1808.21, 1808.22, 1810.2, or 1810.7, the person shall require the agent to take all steps necessary to ensure confidentiality of these addresses and prevent any release of the information to a third party No agent shall obtain or use any confidential or restricted records from requestor code holders for any purpose other than the reason the information was requested by the requestor code holder who originally obtained the information.

SEC. 10. Section 1810 of the Vehicle Code is amended to read:

1810. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.7, and 1808.8, 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 may provide for a 10-day delay in the release of the requested information. 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.

(e) With respect to the inspection or sale of information from the files of drivers' licenses, certificates of ownership and registration cards, the department shall not, for a fee or otherwise, provide photocopies to or allow copying by the public.

SEC. 11. Section 1810.2 is added to the Vehicle Code, to read:

1810.2. (a) The department may establish commercial requester accounts for individuals or organizations and issue requester codes for the purpose of obtaining information from the department's files, except as prohibited by Section 1808.21.

(b) Commercial requester account applications shall include the requester's name, address, type of business and a specific reason for requesting information and the name of the person responsible for the business or firm.

(c) The department shall establish a commercial requester account when it determines that the applicant has a legitimate business need for the information requested and when the applicant files a bond in the amount of fifty thousand dollars ($50,000) and pays a two hundred fifty dollar ($250) filing fee.

(d) An individual requester code shall be issued for a period not to exceed five years and may be renewed upon application for additional periods not to exceed five years each.

(e) A requester code may be denied to any person unless the proposed use of the information from department records is related to legitimate business or commercial purposes of that person. A requester code may be canceled immediately if the requested information is used for a purpose other than the purpose for which the requester code was issued.

SEC. 12. Section 1810.7 of the Vehicle Code is amended to read:

1810.7. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.7, and 1808.21, the department may, by special permit, authorize any person to access the department's electronic data base, as provided for in this section, for the purpose of obtaining vehicle registration information for commercial use.

(b) The department may limit the number of permits issued under this section, and may restrict, or establish priority for, access to its files as the department deems necessary to avoid disruption of its normal operations, or as the department deems is in the best interest of the public.

(c) The department may establish minimum volume levels, audit and security standards, and technological requirements, or any terms and conditions it deems necessary for the permits.

(d) As a condition of issuing a permit pursuant to this section, the department shall require each direct-access permittee to file a performance bond or other financial security acceptable to the department, in an amount the department deems appropriate.

(e) The department shall charge fees for direct-access service permits, and shall charge fees pursuant to Section 1811 for any information copied from the files.

(f) The department shall ensure that information provided pursuant to this section includes only the public portions of records.

(g) The director shall, on and after January 1, 1990, report annually to the Legislature on the implementation of this section. The report shall include the number and location of direct-access permittees, the volume and nature of direct-access inquiries, procedures the department has taken to ensure the security of its files, and the costs and revenues associated with the project.

(h) The department shall establish procedures to ensure confidentiality of any records of residence addresses and mailing addresses as required by Sections 1808.21, 1808.22, 1808.45, 1808.46, and 1810.2.

SEC. 13 Section 4150 of the Vehicle Code is amended to read:

4150. Application for the original registration of a vehicle of a type required to be registered under this code shall be made by the owner to the department upon the appropriate form furnished by it and shall contain all of the following:

(a) The true name and business or residence and mailing address of the owner, and the true name and business or residence or mailing address of the legal owner, if any.

(b) The name of the county in which the owner resides.

(c) A description of the vehicle, including the following data insofar as they may exist:

(1) The make, model, and type of body.

(2) The vehicle identification number or any other identifying number as may be required by the department.

(3) The date first sold by a manufacturer, remanufacturer, or dealer to a consumer.

(d) Such information as may reasonably be required by the

department to enable it to determine whether the vehicle is lawfully entitled to registration.

SEC. 14. Section 4150.2 of the Vehicle Code is amended to read:

4150.2. Application for the original registration of a motorcycle shall be made by the owner to the department upon the appropriate form furnished by it, and shall contain all of the following:

(a) The true name and business or residence and mailing address of the owner, and the true name and business or residence or mailing address of the legal owner, if any.

(b) The name of the county in which the owner resides.

(c) A description of the motorcycle, including the following data insofar as they may exist:

(1) The make and type of body.

(2) The motor and vehicle identification numbers recorded exactly as they appear on the engine and frame, respectively, by the manufacturer, and any other identifying number of the motorcycle as may be required by the department.

(3) The date first sold by a manufacturer, remanufacturer, or dealer to a consumer

(d) Any other information that may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to registration.

(e) The department shall maintain a cross-index file of motor and vehicle identification numbers registered with it.

SEC. 15. Section 38040 of the Vehicle Code is amended to read:

38040. Application for the original identification of a motor vehicle, other than a motorcycle, required to be identified pursuant to this division shall be made by the owner to the department upon the appropriate form furnished by it and shall contain all of the following:

(a) The true name and business or residence and mailing address of the owner, and the true name and business or residence or mailing address of the legal owner, if any.

(b) The name of the county in which the owner resides.

(c) A description of the vehicle, including the following, insofar as it may exist:

(1) The make, model, and type of body.

(2) The vehicle identification number or any other number as may be required by the department.

(d) Such information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to identification.

SEC. 16. Section 38041 of the Vehicle Code is amended to read:

38041 Application for the original identification of a motorcycle shall be made by the owner to the department upon the appropriate form furnished by it, and shall contain:

(a) The true full name and business or residence and mailing address of the owner, and the true name and business or residence or mailing address of the legal owner, if any.

(b) The name of the county in which the owner resides.

(c) A description of the motorcycle including the following data insofar as it may exist:

(1) The make and type of body.

(2) The motor and frame numbers recorded exactly as stamped on the engine and frame, respectively, by the manufacturer, and any other identifying number of the motorcycle as may be required by the department.

(3) The date first sold by a manufacturer or dealer to a consumer.

(d) Such information as may reasonably be required by the department to enable it to determine whether the vehicle is lawfully entitled to identification.

(e) The department shall maintain a cross-index file of motor and frame numbers identified with it.

The application shall be accompanied by a tracing, tape lift, or photograph of the motor or frame numbers, or where such facsimile of the motor or frame numbers cannot be obtained, a verification of such numbers shall be required.

SEC. 17. Section 38075 of the Vehicle Code is amended to read:

38075. (a) The identification certificate shall contain upon the face thereof the date issued, the name and residence or business or mailing address of the owner and of the legal owner, if any, the identification number to the vehicle, and a description of the vehicle as complete as that required in the application for the identification of a vehicle.

(b) The director may modify the form, arrangement, and information appearing on the face of the identification certificate and may provide for standardization and abbreviation of fictitious or firm names thereon whenever he finds that the efficiency of the department will be promoted thereby, except that general delivery or post office box numbers shall not be permitted as the address of the identified owner unless there is no other address.

SEC. 18. Section 40000.61 is added to the Vehicle Code, to read:

40000.61. A violation of Section 1808.45, relating to unauthorized disclosure of department records, is a misdemeanor, and not an infraction.

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

CHAPTER 1214

An act to add Section 19621 to, and to repeal and add Sections 19627 and 19627.1 of, the Business and Professions Code, and to amend Section 4508 of the Food and Agricultural Code, relating to fairs, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 19621 is added to the Business and Professions Code, to read:

19621. Not more than 5 percent of the Fair and Exposition Fund may be used during the 1989–90, 1990–91, or 1991–92 fiscal years to augment the budget of the Department of Food and Agriculture to provide services to fairs and to implement Sections 19627, 19627.1, and 19627.2.

The Director of Food and Agriculture shall annually project the available revenues from this source and submit a recommendation to the Governor for the additional staff and contracts necessary to carry out those sections.

SEC. 2. Section 19627 of the Business and Professions Code is repealed.

SEC. 3. Section 19627 is added to the Business and Professions Code, to read:

19627. (a) Six million four hundred sixty thousand dollars ($6,460,000) of the first balance of the fund is hereby annually appropriated to the Department of Food and Agriculture for the encouragement of county, district, or combined county and district fairs exclusive of the California Exposition and State Fair, the Los Angeles County Fair, 1-A District Agricultural Association, the Sixth District Agricultural Association, known and designated as the California Museum of Science and Industry, and citrus fruit fairs referred to in subdivision (a) of Section 19626, to be apportioned by and expended under the supervision of the Department of Food and Agriculture in the manner and for the purpose prescribed by Part 4 (commencing with Section 4401) of Division 3 of the Food and Agricultural Code and other applicable provisions of law including this section.

(b) Each county, district, or combined county and district fair shall receive an annual apportionment of eighty-five thousand dollars ($85,000).

(c) Each county, district, or combined county and district agricultural fair shall do all of the following:

(1) File an annual statement of operations with the department.

(2) Have an annual budget approved by the department.

(3) Conduct an annual fair which includes agriculture exhibits

and competitions.

SEC. 4. Section 19627.1 of the Business and Professions Code is repealed.

SEC. 5. Section 19627.1 is added to the Business and Professions Code, to read:

19627.1. (a) Three million five hundred forty thousand dollars ($3,540,000) of the first balance of the fund is hereby annually appropriated to the Department of Food and Agriculture for the encouragement of county, district, or combined county and district fairs which receive funds under Section 19627.

(b) Each county, district, or combined county and district fair shall be eligible to receive an additional grant not exceeding forty-five thousand dollars ($45,000) from the department.

(c) Each county, district, or combined county and district fair shall, in addition to meeting the requirements of Section 19627 shall do both of the following:

(1) Comply with the management and fiscal directives of the department.

(2) Submit an annual maintenance program for approval by the department.

SEC. 6. Section 4508 of the Food and Agricultural Code is amended to read:

4508. The classifications of fairs established pursuant to Section 4507 may be considered in determining the basis of compensation to fair managers of fairs that are classified under those provisions.

The department shall annually perform all of the following:

(a) Review and maintain a separate and accurate job description for each fair manager.

(b) Solicit information from fair board of directors that will accurately describe the fair managers performance and responsibilities in regard to merit salary increases for its fair manager.

(c) Annually report its findings to fair directors and fair managers.

CHAPTER 1215

An act to add Division 26 (commencing with Section 36000) to the Public Resources Code, relating to ocean resources.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Division 26 (commencing with Section 36000) is added to the Public Resources Code, to read:

DIVISION 26. OCEAN RESOURCES MANAGEMENT

CHAPTER 1. FINDINGS AND DECLARATIONS

36000. This division shall be known and may be cited as the California Ocean Resources Management Act of 1990.

36001. The Legislature hereby finds and declares all of the following:

(a) The Pacific Ocean and its many renewable and nonrenewable resources are of economic, environmental, aesthetic, recreational, military, and scientific importance to the people of the state and the nation.

(b) Humankind will benefit from ocean resources as technology continues to develop. Our ability to protect, preserve, coordinate, develop, and utilize these resources requires that we do so in an informed and balanced manner.

(c) On March 10, 1983, President Reagan established by proclamation an exclusive economic zone for the United States, declaring sovereign rights over living and nonliving resources within the 200-mile United States exclusive economic zone (EEZ).

(d) On December 27, 1988, President Reagan extended by proclamation the seaward limit of United States territorial waters from 3 to 12 nautical miles.

(e) The establishment of the exclusive economic zone and the extension of the Territorial Sea create zones under federal jurisdiction adjacent to state waters, and provide opportunity for all coastal states of the United States to more fully exercise and assert their responsibilities pertaining to the protection, conservation, and development of ocean resources under United States jurisdiction.

(f) Exploration, scientific research, development, and production of ocean resources resulting from differing jurisdictions and multiple programs in federal and state waters, will increase the chance of conflicting demands on ocean resources and uses, such as those for food, energy, minerals, and waste disposal.

(g) Resolution of conflicting interests in the use, development, and conservation of ocean resources will become one of the major policy issues facing the state. The problems which will emerge in the future due to interactions of competing users are already prevalent to some degree today.

(h) State agencies do have particular regulatory or program interests in protecting and managing resources and uses in state waters and for coordinating state interests in the territorial sea and the EEZ, but the state needs to formulate a framework of statewide objectives for management of ocean resources and their uses, and outline a clear statement of functional responsibility for state ocean resources management.

(i) The exclusive economic zone, the territorial sea, state waters, and terrestrial environments are an interdependent system that has to be managed through a cooperative effort between appropriate

federal, state, and local agencies. The fluid, dynamic nature of the ocean and the migration of many of its living resources beyond state and federal boundaries extend the ocean management interests of this state beyond the three-nautical-mile limit currently managed by the state pursuant to the federal Submerged Lands Act (43 U.S.C. Sec. 1301 et seq.).

36002. The Legislature further finds and declares all of the following:

(a) It is the policy of the State of California to do the following:

(1) Assess the long-term values and benefits of the conservation and development of ocean resources and uses with the objective of restoring or maintaining the health of the ocean ecosystem and ensuring the proper management of renewable and nonrenewable resources.

(2) Encourage ocean resources development which is environmentally sound, sustainable, and economically beneficial.

(3) Provide for efficient and coordinated resources management in state and federal waters.

(4) Assert the interests of this state in cooperation with federal agencies in the sound management of ocean resources.

(5) Promote research, study, and understanding of ocean processes and resources to acquire the scientific information necessary to understand the ocean ecosystem and life-support systems and the relationships of ocean development activities and associated impacts on ocean and coastal resources of the state and adjacent zones of federal jurisdiction.

(6) Encourage research and development of innovative, environmentally compatible marine technologies for protection, exploration, and utilization of ocean resources.

(b) It is further the policy of the State of California to develop and maintain an ocean resources planning and management program to promote and ensure coordinated management of federal resources and uses with those in state waters, and with adjacent states, to ensure effective participation in federal planning and management of ocean resources and uses which may affect this state, and to coordinate state agency management of ocean resources with local government management of coastal zone uses and resources above the mean high tide line.

36003. (a) No authority is created under this division, nor shall any of its purposes or provisions be used by any public or private agency or person, to delay or deny any existing or future project or activity during the preparation and delivery of the report and recommendations required by this division.

(b) No authority is created under this division to supersede current state agency statutory authority.

(c) The task force established pursuant to Section 36300 shall cease to exist upon delivery of its report and recommendations to the Governor and the Legislature.

CHAPTER 2. DEFINITIONS

36100. Unless the context otherwise requires, the definitions in this chapter govern the interpretation of this division.

36101. "Advisory committee" means the California Ocean Resources Advisory Committee established pursuant to Section 36302.

36102. "Exclusive economic zone (EEZ)" means the zone as measured from the mean high tide line seaward to 200 nautical miles as set forth in the Presidential Proclamation 5030 of March 10, 1983, in which the United States proclaimed jurisdiction over the resources of the ocean within 200 miles of the coastline.

36103. "High Seas" means offshore waters beyond 200 nautical miles from the coastline.

36104. "Program" means the California Ocean Resources Management Program established by Section 36200.

36105. "Ocean" and "marine" mean those waters from the coastline into the high seas.

36106. "Ocean resources" means all living and nonliving resources found in the Pacific Ocean and its contiguous saline or brackish bays and estuaries.

36107. "Report and recommendations" means the report and recommendations prepared by the task force.

36108. "State waters" means the zone as measured from the mean high tide line to three nautical miles offshore, as set forth by the Submerged Lands Act (43 U.S.C. Sec. 1311) in which the United States released to adjacent coastal states title, ownership, and the right to manage natural resources from the mean high tide line seaward to three miles.

36109. "Task force" means the Ocean Resources Task Force created by Section 36300.

36110. "Territorial sea" means the zone as measured from mean high tide line to 12 nautical miles offshore as set forth in the Presidential Proclamation on December 27, 1988, in which the United States extended its sovereignty and jurisdiction.

CHAPTER 3. CALIFORNIA OCEAN RESOURCES MANAGEMENT PROGRAM

36200. To ensure the conservation and development of ocean resources consistent with purposes of this division, a coordinated program of ocean resources planning and management is established.

36201. The California Ocean Resources Management Program consists of all of the following:

(a) The Ocean Resources Task Force.

(b) The California Ocean Resources Advisory Committee.

(c) The report and recommendations prepared and adopted pursuant to Chapter 6 (commencing with Section 36500).

CHAPTER 4. CREATION AND MEMBERSHIP OF THE TASK FORCE

36300. The Ocean Resources Task Force is hereby created in state government. The task force is comprised of the following or their designee: the Secretary of Environmental Affairs, the Secretary of the Resources Agency, the Director of Commerce, the State Director of Health Services, the Secretary of the Business, Transportation and Housing Agency, the Chairperson or Executive Officer of the State Lands Commission as determined by the commission, the Chairperson or Executive Director of the California Coastal Commission as determined by the commission, the Chairperson or Executive Officer of the Coastal Conservancy as determined by the conservancy, the Chairperson or Executive Director of the San Francisco Bay Conservation and Development Commission as determined by the commission, the Director of Conservation, the Director of Fish and Game, the Director of Boating and Waterways, the Director of Parks and Recreation, the Chairperson of the Mining and Geology Board, the Chairperson or Executive Director of the State Water Resources Control Board as determined by the board, the Executive Officer of each California regional water quality control board for a coastal region, the Director of Finance, the Chairperson or Executive Director of the State Energy Resources Conservation and Development Commission as determined by the commission, the Chairperson of the State Air Resources Board, the Chairperson of the Senate Committee on Natural Resources and Wildlife, the Chairperson of the Assembly Natural Resources Committee, the President of the University of California, the Chancellor of the California State University, and the Director of the California Sea Grant program.

36301. The chairperson of the task force shall be the Secretary of Environmental Affairs, who shall provide all staff support required by the task force. The task force shall meet at the call of the chairperson.

36302. The chairperson of the task force, with advice from the task force, shall appoint the California Ocean Resources Advisory Committee, which, at a minimum, shall consist of the following: representatives of coastal local governments, relevant federal agencies, environmental and interest groups, the Legislature, and relevant industries such as oil and gas, hard minerals, biotechnology, commercial and sportfishing, seafood processing, aquaculture, transportation, tourism, and ports and harbors.

The advisory committee shall review the draft of the report and recommendations of the task force and shall advise the task force in its preparation.

CHAPTER 5. RESPONSIBILITIES AND DUTIES OF THE TASK FORCE

36400. The task force shall prepare a report as required by Section 36500.

36401. The chairperson of the task force shall submit the report and recommendations to the Governor and the Legislature as specified in Section 36500.

36402. The task force shall provide opportunity for public review and comment following release of a draft scoping document and also following release of a draft report and recommendations. Public comments shall be submitted with the report and recommendations to the Governor and the Legislature.

CHAPTER 6. PREPARATION OF OCEAN RESOURCES REPORT AND RECOMMENDATIONS

36500. The task force shall prepare a report regarding existing ocean resources management activities and impacts, including recommendations to increase coordination and consolidation of these activities. The report shall be submitted to the Governor and Legislature by January 1, 1993. The report and recommendations shall include, to the degree information is available, at least all of the following:

(a) Inventory of state and federal laws, rules and regulations, authorities, and programs which pertain to the resources and uses of state and federal waters.

(b) Analysis of state laws, rules and regulations, authorities, and programs which pertain to the resources and uses of state and federal waters, and which conflict with one another or with federal laws, rules and regulations, authorities, and programs.

(c) Identification of existing and potential resources and uses of, and issues pertaining to, the ocean, and of potential new industries and jobs related to development of ocean resources and uses.

(d) Identification of potential impacts to federal and state waters and to coastal areas above the mean high tide line from activities in federal and state waters, and an evaluation of state agency ability to manage those impacts.

(e) Identification of all existing state and federal programs relating to federal and state waters pollution research and monitoring, including general research on the marine ecosystem.

(f) Evaluation of the feasibility of developing computerized mapping of existing conditions, uses, and resources in federal and state waters.

(g) Recommendations for long-term planning for conservation and protection of ocean resources and uses.

(h) Recommendations for long-term planning for the management of California's interests in federal waters, including recommendations to develop or improve state agency programs relating to the management of EEZ resources and uses, and the identification of issues which may affect local government local coastal programs.

(i) Recommendations for the continuation and improvement of the role of the state as a leader in education, research, and training

in marine sciences and the management of marine resources, including recommendations for state-supported marine research in state and federal waters.

(j) Recommendations for cooperation by the state with other states, the federal government, other nations, and national and international organizations in marine science activities when that cooperation is in the interest of the State of California.

(k) Recommendations for options for ensuring appropriate public infrastructure investment to support present and future ocean industries.

(*l*) Prioritization of resource and use conflicts in federal and state waters.

(m) Identification of alternative dispute management and resolution processes for resource conflicts in and between federal and state jurisdictions, and a proposed framework for managing future conflicts.

(n) Recommendations for joint federal and state management activities and revenue sharing in state and federal waters.

(o) Recommendations for proposed implementing legislation, if any.

CHAPTER 1216

An act to amend Sections 1033.7, 3557, 3774.5, 5285.5, 5373.1, and 5378.5 of, and to add Sections 1070.5 and 5378.6 to, the Public Utilities Code, and to amend Sections 612, 1808.1, 34501.12, 34505.1, 34505.5, 34505.6, 34507.5, and 34515 of the Vehicle Code, relating to carriers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 1033.7 of the Public Utilities Code is amended to read:

1033.7. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the certificate of a passenger stage corporation be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to comply with the pull notice system or periodic report requirements required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the corporation's certificate. The

department's written recommendation shall specifically indicate compliance with subdivision (c).

(b) A corporation whose certificate is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars ($125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Public Utilities Commission Transportation Reimbursement Account. The commission shall forward a request for reinspection to the department which shall perform a reinspection within a reasonable time. The commission shall reinstate a corporation's certificate suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the corporation's safety compliance has improved to the satisfaction of the department, unless the certificate is suspended for another reason or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the passenger stage corporation in writing of all of the following:

(1) That the department has determined that the corporation's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the corporation's certificate by the commission.

(3) That the corporation may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the corporation, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the certificate of any passenger stage corporation pursuant to subdivision (a), the commission shall furnish the corporation written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the corporation shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other applicable penalty provided in this part, terminate the suspension, continue the suspension in effect, or revoke the certificate. The commission may revoke the certificate of any passenger stage corporation suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the corporation has not filed a written request for a hearing with

the commission.

SEC. 2. Section 1070.5 is added to the Public Utilities Code, to read:

1070.5. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the certificate of a highway common carrier or cement carrier be suspended either: (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to comply with the pull notice system or periodic report requirements required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's certificate. The department's written recommendation shall specifically indicate compliance with subdivision (c).

(b) A carrier whose certificate is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars ($125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Transportation Rate Fund. The commission shall forward a request for reinspection to the department which shall perform a reinspection within a reasonable time. The commission shall reinstate a carrier's certificate suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the certificate is suspended for another reason or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the highway common carrier or cement carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the carrier's certificate by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the certificate of any highway common carrier or cement carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the

suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other applicable penalty provided in this part, terminate the suspension, continue the suspension in effect, or revoke the certificate. The commission may revoke the certificate of any highway common carrier or cement carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

SEC. 2.5. Section 3557 of the Public Utilities Code is amended to read:

3557. (a) The commission shall establish a classification of highway carriers known as owner-operators.

(b) As used in this section, and in Sections 1808 3 and 34501 12 of the Vehicle Code, an owner-operator is a person who meets all of the following:

(1) Holds a class 1, class 2, class A, or class B driver's license.

(2) Owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles.

(3) Holds highway carrier operating authority from the commission under Part 1 (commencing with Section 201) of Division 1, or Chapter 1 (commencing with Section 3501) or Chapter 7 (commencing with Section 5101).

(c) As used in this section, "heavy power unit" is a motor vehicle described in subdivision (a), (b), or (g) of Section 34500 of the Vehicle Code and "towed vehicle" is a nonmotorized vehicle described in subdivision (d), (e), (f), or (g) of that section.

(d) On and after January 1, 1990, the commission shall forward, at least annually, an updated list of owner-operators, along with their driver's license numbers, to the Department of Motor Vehicles. The commission, upon notification by the Department of Motor Vehicles that an owner-operator's driving privilege is suspended or revoked, shall suspend the carrier's operating authority, unless the carrier within 15 days shows good cause as to why the operating authority should not be suspended.

(e) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

SEC. 3. Section 3774.5 of the Public Utilities Code is amended to read:

3774.5. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the permit of a highway permit carrier be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in a

safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to comply with the pull notice system or periodic report requirements required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's permit. The written recommendation shall specifically indicate compliance with subdivision (c).

(b) A carrier whose certificate is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars ($125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Transportation Rate Fund. The commission shall forward a request for reinspection to the department which shall perform a reinspection within a reasonable time. The commission shall reinstate a carrier's permit suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the permit is suspended for another reason or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the highway permit carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the carrier's permit by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the permit of any highway permit carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other applicable penalty provided in this chapter, terminate the suspension, continue the

suspension in effect, or revoke the permit. The commission may revoke the certificate of any highway permit carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

SEC. 4. Section 5285.5 of the Public Utilities Code is amended to read:

5285.5. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the permit of a household goods carrier be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to comply with the pull notice system or periodic report requirements required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's permit. The written recommendation shall specifically indicate compliance with subdivision (c).

(b) A carrier whose permit is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars ($125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Transportation Rate Fund. The commission shall then forward a request for reinspection to the department which shall then perform a reinspection within a reasonable time. The commission shall reinstate a carrier's permit suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the permit is suspended for another reason or has been revoked

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the household goods carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension or revocation of the carrier's permit by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is

requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the permit of any household goods carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other penalty provided in this chapter, terminate the suspension, continue the suspension in effect, or revoke the permit. The commission may revoke the permit of any household goods carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the corporation has not filed a written request for a hearing with the commission.

SEC. 5. Section 5373.1 of the Public Utilities Code is amended to read:

5373.1. (a) Each application for a charter-party carrier of passengers certificate or permit shall be accompanied by a filing fee as follows:

(1) Class A certificates—five hundred dollars ($500).

(2) Class B certificates—five hundred dollars ($500).

(3) Permits—five hundred dollars ($500).

(b) The commission shall also require each application to be accompanied by a fee to offset the cost of the charter-party carrier bus terminal inspections conducted by the Department of the California Highway Patrol. The fee shall be fifteen dollars ($15) per tour bus, as defined in Section 612 of the Vehicle Code, or a maximum of six thousand five hundred dollars ($6,500) for each operating carrier.

(c) The commission shall require each charter-party carrier that operates tour buses, as defined in Section 612 of the Vehicle Code, to undergo an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars ($15) per tour bus, or a maximum of six thousand five hundred dollars ($6,500), to offset the cost of the inspections.

(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.

SEC. 6. Section 5378.5 of the Public Utilities Code is amended to read:

5378.5. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that the certificate or permit of a charter-party carrier be suspended either (1) for failure to maintain any vehicle used in transportation for compensation in

a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) for failure to comply with the pull notice system or periodic report requirements required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's certificate or permit. The written recommendation shall specifically indicate compliance with subdivision (c).

(b) A carrier whose certificate or permit is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department, by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars ($125). The commission shall deposit all reinstatement fees collected pursuant to this subdivision in the Public Utilities Commission Transportation Reimbursement Account. The commission shall then forward a request for reinspection to the department which shall then perform a reinspection within a reasonable time. The commission shall reinstate a carrier's certificate or permit suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the department, unless the certificate or permit is suspended for another reason, or has been revoked.

(c) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the charter-party carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in suspension or revocation of the carrier's certificate or permit by the commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(d) Whenever the commission suspends the certificate or permit of any charter-party carrier pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may, in addition to any other penalty provided in this

chapter, terminate the suspension, continue the suspension in effect, or revoke the certificate or permit. The commission may revoke the certificate or permit of any carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

SEC. 7. Section 5378.6 is added to the Public Utilities Code, to read:

5378.6. (a) Upon receipt of a written recommendation from the Department of the California Highway Patrol that a new or renewal application for a charter-party carrier certificate or permit be denied either (1) for failure to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety or (2) for failure to comply with the pull notice system or periodic report requirements required by Section 1808.1 of the Vehicle Code, the commission shall deny the application. The department's written recommendation shall specifically indicate compliance with subdivision (b).

(b) Before transmitting a recommendation pursuant to subdivision (a) to the commission, the Department of the California Highway Patrol shall notify the applicant for the charter-party carrier certificate or permit of all of the following in writing:

(1) That the department has determined that the applicant's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a denial of the applicant's certificate or permit by the commission.

(3) That the applicant may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. The department shall, upon request, conduct and evaluate that review prior to transmitting any notification to the commission pursuant to subdivision (a).

(c) Whenever the commission denies an application for renewal pursuant to subdivision (a), the commission shall furnish the charter-party carrier written notice of the denial and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request is filed with the commission, with a copy thereof furnished to the Department of the California Highway Patrol. At the hearing, the carrier shall show cause why the denial was improper or unwarranted. At the conclusion of the hearing, the commission may, in addition to any other remedy provided in this part, reverse the denial, or sustain the denial.

(d) Any applicant for a charter-party carrier certificate or permit denied pursuant to subdivision (a), whose denial has not been reversed as a result of the hearing provided for in subdivision (c),

that wishes to obtain a certificate or permit shall reapply for the desired authority.

SEC. 8. Section 612 of the Vehicle Code is amended to read:

612. "Tour bus" means a bus, which is operated by or for a charter-party carrier of passengers, as defined in Section 5360 of the Public Utilities Code, or a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, or any highway carrier of passengers required to register with the California Public Utilities Commission pursuant to Section 3910 of the Public Utilities Code.

SEC. 9. 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 class 1, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12523.5, 12524, 12804.1, or 12804.3, shall obtain a report showing the driver's current public record as recorded by the department.

(b) The employer of a driver who drives a vehicle requiring a class 1, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12523.5, 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.

(c) The employer of a driver of a vehicle requiring a class 1, class 2, class A, or class B driver's license 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 convicted of 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 may notify the department to cancel any reports required by this section.

(e) For the purposes of the pull notice system and periodic report process required by subdivisions (b) and (c), owners, other than owner-operators as defined in Section 3557 of the Public Utilities Code, and employers who drive vehicles described in subdivisions (b) and (c), shall be enrolled as if they were employees. Family

members and volunteer drivers who drive vehicles described in subdivisions (b) and (c) shall also be enrolled as if they were employees.

(f) 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.

(g) 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, as defined in Section 99210 of the Public Utilities Code, 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.

(h) 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. Failure to pay the fee shall result in automatic cancellation of the employer's participation in the notification services.

(i) The department, as soon as feasible, may establish an automatic procedure to provide the periodic reports in subdivision (c) to employers on a regular basis without the need for individual requests.

(j) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

(k) The employer of a driver who is employed as a casual driver is not required to enter that driver's name in the pull notice system, as otherwise required by subdivision (a). However, the employer of a casual driver shall be in possession of a report of the driver's current public record as recorded by the department, prior to allowing a casual driver to drive a vehicle requiring a class 1, class 2, class A, or class B driver's license, or a certificate issued pursuant to Section 2512, 12517, 12519, 12519.5, 12521, 12523, 12523.5, 12524, 12804.1, or 12804.3. A report is current if it was issued less than six months prior to the date the employer employs the driver. As used in this subdivision, a driver is employed as a casual driver when the

employer has employed the driver less than 30 days during the preceding six months.

SEC. 10. Section 34501.12 of the Vehicle Code is amended to read:

34501.12. (a) Notwithstanding Section 408, as used in this section and Sections 34505.5 and 34505.6, "motor carrier" means the registered owner of any vehicle described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500, except in the following circumstances:

(1) The registered owner leases the vehicle to another person for a term greater than four months. If the lease is greater than four months, the lessee is the motor carrier.

(2) The registered owner operates the vehicle exclusively under the authority and direction of another person. If the operation is exclusively under the authority and direction of another person, that other person may assume the responsibilities as the motor carrier. If not so assumed, the registered owner is the motor carrier.

(b) Each motor carrier who, in this state, directs the operation of, or maintains, any vehicle of a type described in subdivision (a) shall designate one or more terminals, as defined in Section 34515, in this state where vehicles can be inspected by the department pursuant to paragraph (3) of subdivision (a) of Section 34501 and where vehicle inspection and maintenance records and driver records will be made available for inspection.

(c) The department shall inspect, at least every 25 months, every terminal, as defined in Section 34515 of any motor carrier who, at any time, operates any vehicle described in subdivision (a).

As used in this section and in Sections 34505.5 and 34505.6, subdivision (g) of Section 34500 includes only those vehicles transporting hazardous material for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which hazardous waste hauler registration is required pursuant to Section 25163 of the Health and Safety Code. Historical vehicles, as described in Section 5004, vehicles which display special identification plates in accordance with Section 5011, implements of husbandry, as defined in Chapter 1 (commencing with Section 36000) of Division 16, and vehicles owned or operated by an agency of the federal government are not subject to this section or to Sections 34505.5 and 34505.6.

(d) (1) It is the responsibility of the motor carrier to schedule with the department the inspection required by subdivision (c). The motor carrier shall submit an application form supplied by the department, accompanied by the required fee. The fee shall be four hundred dollars ($400) per terminal, except in the case of an owner-operator, as defined in Section 3557 of the Public Utilities Code, or a nonregulated motor carrier who owns, leases, or otherwise operates not more than one heavy power unit and not more than three towed vehicles described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500, for which the fee shall be one hundred dollars ($100). Federal, state, and local public entities are exempt from the

fee requirements of this section.

(2) Every motor carrier subject to the requirements of this section shall submit an application for the initial inspection required by subdivision (a) on or before July 1, 1989. The inspection term for a motor carrier shall expire 25 months from the date the department conducts the motor carrier's first terminal inspection, and every 25 months thereafter. Applications and fees for subsequent inspections shall be submitted not later than seven months before the expiration of the motor carrier's then current inspection term. If the motor carrier has submitted the inspection application and the required accompanying fees, but the department is unable to complete the inspection within the 25-month inspection period, then no additional fee shall be required for the inspection requested in the original application.

(3) All fees collected pursuant to this subdivision shall be deposited in the Motor Vehicle Account in the State Transportation Fund. An amount equal to the fees collected shall be available for appropriation by the Legislature from the Motor Vehicle Account to the department for the purpose of conducting truck terminal inspections and for the additional roadside safety inspections required by Section 34514.

(e) On and after July 1, 1989, it shall be unlawful for any motor carrier to operate any vehicle subject to this section without having submitted an inspection application and the required fees to the department as required by paragraph (2) of subdivision (b).

(f) On and after January 1, 1992, it shall be unlawful for any motor carrier to operate any vehicle subject to this section after submitting an inspection application to the department, without the inspection described in subdivision (a) having been performed and a safety compliance report having been issued to the motor carrier within the 25-month inspection period or within 60 days immediately preceding the inspection period.

(g) It is the intent of the Legislature that the department make its best efforts to inspect terminals within the resources provided. In the interest of the state, the Commissioner of the California Highway Patrol may extend for a period not to exceed six months the inspection terms beginning prior to July 1, 1990.

(h) The department shall report to the Legislature not later than September 1, 1991, on the mandates of the California Commercial Motor Vehicle Safety Act of 1988 and the mandates of Section 34514. The department shall recommend any program adjustments that may be desirable, and shall report on any fee adjustments that may be required to fully fund biennial terminal inspections of all California truck terminals. The department shall also consider the feasibility of implementing an incentive program which would benefit truck operators with excellent safety records.

SEC. 11. Section 34505.1 of the Vehicle Code is amended to read:

34505.1. (a) Upon determining that a tour bus operator has either (1) failed to maintain any vehicle used in transportation for

compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes such a consistent failure as to justify a recommendation to the Public Utilites Commission or the Interstate Commerce Commission or (2) failed to comply with the pull notice system or periodic report requirements required by Section 1808.1, the department shall recommend to the Public Utilities Commission or the Interstate Commerce Commission that the carrier's operating authority be suspended, denied, or revoked, whichever is appropriate. However, when recommending denial of an application for new or renewal authority, the department need not conclude that the carrier's failure presents an imminent danger to public safety or that it constitutes a consistent failure. The department need only conclude that the carrier's compliance with the safety-related matters described in paragraph (1) of subdivision (a) is sufficiently unsatisfactory to justify a recommendation for denial. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(b) Before transmitting a recommendation pursuant to subdivision (a), the department shall notify the carrier in writing of all of the following.

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension, revocation, or denial of the carrier's operating authority by the California Public Utilities Commission or the Interstate Commerce Commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification pursuant to subdivision (a).

SEC. 11.5. Section 34505.5 of the Vehicle Code is amended to read:

34505.5. (a) Every motor carrier operating any vehicle described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500, except those vehicles exempted under subdivision (c) of Section 34501 12, shall, as a part of the systematic inspection, maintenance, and lubrication services required of all motor carriers, require the vehicle or vehicles for which it is responsible pursuant to subdivision (a) of Section 34501.12 to be inspected at least every 90 days, or more often if necessary to ensure safe operation. Vehicles which are out of service for periods greater than 90 calendar days are not required to be inspected at 90-day intervals if they are inspected before operation on the highway. This inspection shall include, but not be limited to, all of the following:

(1) Brake adjustment.

(2) Brake system components and leaks.
(3) Steering and suspension systems.
(4) Tires and wheels.
(5) Vehicle connecting devices.

(b) No vehicle subject to this section shall be operated on the highway other than to a place of repair until all defects listed during the inspection conducted pursuant to subdivision (a) have been corrected and attested to by the signature of the motor carrier's authorized representative.

(c) Records of inspections conducted pursuant to subdivision (a) shall be kept at the motor carrier's terminals, as designated in accordance with subdivision (b) of Section 34501.12. The records shall be retained by the motor carrier for two years, and shall be made available for inspection upon request by any authorized employee of the department. Each record shall include, but not be limited to, all of the following:

(1) Identification of the vehicle, including make, model, license number, company vehicle number, or other means of positive identification.

(2) Date and nature of each inspection and any repair performed.

(3) Signature of the motor carrier's authorized representative attesting to the inspection and to the completion of all required repairs

(d) Printouts of inspection and maintenance records maintained in computer systems shall be accepted in lieu of signed inspection or repair records if the printouts include the information required in paragraphs (1) and (2) of subdivision (c).

(e) Notwithstanding subdivisions (a) to (d), inclusive, records of 90-day inspections need not be retained in California for interstate vehicles which are not physically based in California. However, when these vehicles are present in California, they are subject to inspection by the department. If the inspection results indicate maintenance program deficiencies, the department may require the motor carrier to produce the maintenance records or copies of those records for inspection within 10 working days.

SEC. 12 Section 34505.6 of the Vehicle Code is amended to read:

34505.6. (a) Upon determining that a motor carrier operating any vehicle described in subdivision (a), (b), (d), (e), (f), or (g) of Section 34500 has either (1) failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes such a consistent failure as to justify a recommendation to the Public Utilities Commission or the Interstate Commerce Commission, or (2) failed to comply with the pull notice system or periodic report requirements required by Section 1808.1, the department shall recommend to the Public Utilities Commission or the Interstate

Commerce Commission that the carrier's operating authority be suspended, denied, or revoked, whichever is appropriate. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(b) Before transmitting a recommendation pursuant to subdivision (a), the department shall notify the carrier in writing of all of the following:

(1) That the department has determined that the carrier's safety record is unsatisfactory, furnishing a copy of any documentation or summary of any other evidence supporting the determination.

(2) That the determination may result in a suspension, revocation, or denial of the carrier's operating authority by the California Public Utilities Commission or the Interstate Commerce Commission.

(3) That the carrier may request a review of the determination by the department within five days of its receipt of the notice required under this subdivision. If a review pursuant to this paragraph is requested by the carrier, the department shall conduct and evaluate that review prior to transmitting any notification pursuant to subdivision (a).

SEC. 13. Section 34507.5 of the Vehicle Code is amended to read:

34507.5. (a) Every motor carrier shall obtain a carrier identification number from the department. Application for a carrier identification number shall be on forms furnished by the department. Information provided in connection with applications for carrier identification numbers shall be updated by motor carriers upon request from the department.

(b) (1) The carrier identification number shall be displayed on both sides of each vehicle set forth in Section 34500, or on both sides of at least one motor vehicle in each combination of vehicles.

(2) The display of the carrier identification number shall be in sharp contrast to the background, and shall be of such size, shape, and color as to be readily legible during daylight hours from a distance of 50 feet.

(3) The carrier identification number shall be removed before sale, transfer, or other disposal of the vehicle.

(c) This section does not apply to any of the following vehicles:

(1) Vehicles which are regulated by, and which display a valid operating authority or identification number assigned by, the Interstate Commerce Commission, the Public Utilities Commission, or the United States Department of Transportation.

(2) Vehicles described in subdivision (g) of Section 34500 if the hazardous material transportation does not require the display of placards pursuant to Section 27903, a license pursuant to Section 32000.5, or hazardous waste hauler registration pursuant to Section 25163 of the Health and Safety Code.

(3) Historical vehicles, as described in Section 5004, vehicles which display special identification plates in accordance with Section 5011, and implements of husbandry as defined in Chapter 1 (commencing with Section 36000) of Division 16.

SEC. 14. Section 34515 of the Vehicle Code is amended to read:

34515. (a) As used in this division and in regulations adopted pursuant thereto, "maintenance facility or terminal" means any place or places where a vehicle of a type listed in Section 34500 is regularly garaged or maintained, or from which it is operated or dispatched. "Maintenance facility or terminal" may include a private business or residence.

(b) For the purpose of the inspections required by subdivision (c) of Section 34501.12, "terminal" means the location or locations in this state which are designated by a motor carrier, where subject vehicles may be inspected by the department pursuant to paragraph (3) of subdivision (a) of Section 34501, and where vehicle maintenance and inspection records and drivers' records will be made available for inspection.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remove the Attorney General's enforcement moratorium on the biennial truck terminal inspection program established by the Department of the California Highway Patrol pursuant to Chapter 1586 of the Statutes of 1988, and in order to enable the Department of the California Highway Patrol to immediately commence the safety inspection program which was to have begun on July 1, 1989, it is necessary that this act take effect immediately.

CHAPTER 1217

An act to amend Sections 53341.5 and 66007 of, and to amend and renumber Section 53340.1 of, the Government Code, to amend Section 987.8 of the Penal Code, to amend Section 16472.1 of the Public Utilities Code, and to amend Section 3114.5 of the Streets and Highways Code, relating to liens.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 53340.1, as added to the Government Code by Chapter 1365 of the Statutes of 1988, is amended and renumbered to read:

53340.2. The legislative body levying the special tax shall designate an office, department, or bureau of the local agency which shall be responsible for annually preparing the current roll of special tax levy obligations by assessor's parcel number on nonexempt property within the district and which will be responsible for estimating future special tax levies. The designated office, department, or bureau shall establish procedures to promptly respond to inquiries concerning current and future estimated tax liability. Neither the designated office, department, or bureau, nor the legislative body, shall be liable if any estimate of future tax liability is inaccurate.

SEC. 2. Section 53341.5 of the Government Code is amended to read:

53341.5. (a) If a lot, parcel, or unit of a subdivision is subject to a special tax levied pursuant to this chapter for which a public report is not required pursuant to Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code, the subdivider, his or her agent, or representative, shall not sell, or lease for a term exceeding five years, the lot, parcel, or unit, or cause it to be sold or leased for a term exceeding five years, until the prospective purchaser or lessee of the lot, parcel, or unit has been furnished with and has signed a written notice as provided in this section. The notice shall contain the heading "NOTICE OF SPECIAL TAX" in type no smaller than 8-point type, and shall state the following in clear and simple language:

(1) That the property being purchased is or will be subject to a special tax.

(2) The maximum annual amount of the special tax, and the number of years for which it will be levied.

(3) The types of facilities or services to be paid for with the proceeds of the special tax.

(b) "Subdivision," as used in subdivision (a), means improved or unimproved land that is divided or proposed to be divided for the

purpose of sale, lease, or financing, whether immediate or future, into two or more lots, parcels, or units and includes a condominium project, as defined by Section 1350, a community apartment project, a stock cooperative, and a limited-equity housing cooperative, as defined in Sections 11004, 11003.2, and 11003.4, respectively, of the Business and Professions Code.

(c) If any disclosure required to be made by this section is delivered after the execution of an agreement to purchase, the buyer shall have three days after delivery in person or five days after delivery by deposit in the mail, to terminate his or her agreement by delivery of written notice of that termination to the owner, subdivider, or agent. Any disclosure delivered after the execution of an agreement to purchase shall contain a statement describing the buyer's right, method and time to rescind as prescribed by this subdivision.

(d) The failure to furnish the notice to the buyer or lessee, and failure of the buyer or lessee to sign the notice of a special tax, shall not invalidate any grant, conveyance, lease, or encumbrance.

(e) Any person or entity who willfully violates the provisions of this section shall be liable to the purchaser of a lot or unit which is subject to the provisions of this section, for actual damages, and in addition thereto, shall be guilty of a public offense punishable by a fine in an amount not to exceed five hundred dollars ($500). In an action to enforce such liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

SEC. 3. Section 66007 of the Government Code is amended to read.

66007. (a) Except as otherwise provided in subdivision (b), any local agency which imposes any fees or charges on a residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. However, utility service fees may be collected at the time an application for utility service is received. If the residential development contains more than one dwelling, the local agency may determine whether the fees or charges shall be paid on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first; on a pro rata basis when a certain percentage of the dwellings have received their final inspection or certificate of occupancy, whichever occurs first; or on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

(b) Notwithstanding subdivision (a), the local agency may require the payment of those fees or charges at an earlier time if (1) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency

has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (2) the fees or charges are to reimburse the local agency for expenditures previously made. "Appropriated," as used in this subdivision, means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

(c) (1) If any fee or charge specified in subdivision (a) is not fully paid prior to issuance of a building permit for construction of any portion of the residential development encumbered thereby, the local agency issuing the building permit may require the property owner, or lessee if the lessee's interest appears of record, as a condition of issuance of the building permit, to execute a contract to pay the fee or charge, or applicable portion thereof, within the time specified in subdivision (a). If the fee or charge is prorated pursuant to subdivision (a), the obligation under the contract shall be similarly prorated.

(2) The obligation to pay the fee or charge shall inure to the benefit of, and be enforceable by, the local agency that imposed the fee or charge, regardless of whether it is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of the county and, from the date of recordation, shall constitute a lien for the payment of the fee or charge, which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the public agency issuing the building permit as grantee and in the name of the property owner or lessee as grantor. The local agency shall record a release of the obligation, containing a legal description of the property, in the event the obligation is paid in full, or a partial release in the event the fee or charge is prorated pursuant to subdivision (a).

(3) The contract may require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the local agency imposing the same from the sale proceeds in escrow prior to disbursing proceeds to the seller.

(d) This section applies only to fees collected by a local agency to fund the construction of public improvements or facilities. It does not apply to fees collected to cover the cost of code enforcement or inspection services, or to other fees collected to pay for the cost of enforcement of local ordinances or state law.

(e) "Final inspection" or "certificate of occupancy," as used in this section, have the same meaning as described in Sections 305 and 307 of the Uniform Building Code, International Conference of Building Officials, 1985 Edition.

(f) Methods of complying with the requirement in subdivision (b) that a proposed construction schedule or plan be adopted,

include, but are not limited to, (1) the adoption of the capital improvement plan described in Section 66002, or (2) the submittal of a five-year plan for construction and rehabilitation of school facilities pursuant to subdivision (c) of Section 17717.5 of the Education Code.

(g) 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. 4. Section 987.8 of the Penal Code is amended to read:

987.8. (a) Upon a finding by the court that a defendant is entitled to counsel but is unable to employ counsel, the court may hold a hearing or, in its discretion, order the defendant to appear before a county officer designated by the court, to determine whether the defendant owns or has an interest in any real property or other assets subject to attachment and not otherwise exempt by law. The court may impose a lien on any real property owned by the defendant, or in which the defendant has an interest to the extent permitted by law. The lien shall contain a legal description of the property, shall be recorded with the county recorder in the county or counties in which the property is located, and shall have priority over subsequently recorded liens or encumbrances. The county shall have the right to enforce its lien for the payment of providing legal assistance to an indigent defendant in the same manner as other lienholders by way of attachment, except that a county shall not enforce its lien on a defendant's principal place of residence pursuant to a writ of execution. No lien shall be effective as against a bona fide purchaser without notice of the lien.

(b) In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court, or upon the withdrawal of the public defender or appointed private counsel, the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided.

(c) In any case in which the defendant hires counsel replacing a publicly provided attorney; in which the public defender or appointed counsel was required by the court to proceed with the case after a determination by the public defender that the defendant is not indigent; or, in which the defendant, at the conclusion of the case, appears to have sufficient assets to repay, without undue hardship, all or a portion of the cost of the legal assistance provided to him or her, by monthly installments or otherwise; the court shall make a determination of the defendant's ability to pay as provided in subdivision (b), and may, in its discretion, make other orders as

provided in that subdivision.

This subdivision shall be operative in a county only upon the adoption of a resolution by the board of supervisors to that effect.

(d) If the defendant, after having been ordered to appear before a county officer, has been given proper notice and fails to appear before a county officer within 20 working days, the county officer shall recommend to the court that the full cost of the legal assistance shall be ordered to be paid by the defendant. The notice to the defendant shall contain all of the following:

(1) A statement of the cost of the legal assistance provided to the defendant as determined by the court.

(2) The defendant's procedural rights under this section.

(3) The time limit within which the defendant's response is required.

(4) A warning that if the defendant fails to appear before the designated officer, the officer will recommend that the court order the defendant to pay the full cost of the legal assistance provided to him or her.

(e) At a hearing, the defendant shall be entitled to, but shall not be limited to, all of the following rights:

(1) The right to be heard in person.

(2) The right to present witnesses and other documentary evidence.

(3) The right to confront and cross-examine adverse witnesses.

(4) The right to have the evidence against him or her disclosed to him or her.

(5) The right to a written statement of the findings of the court.

If the court determines that the defendant has the present ability to pay all or a part of the cost, the court shall set the amount to be reimbursed and order the defendant to pay the sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. Failure of a defendant who is not in custody to appear after due notice is a sufficient basis for an order directing the defendant to pay the full cost of the legal assistance determined by the court. The order to pay all or a part of the costs may be enforced in the manner provided for enforcement of money judgments generally but may not be enforced by contempt.

Any order entered under this subdivision is subject to relief under Section 473 of the Code of Civil Procedure.

(f) Prior to the furnishing of counsel or legal assistance by the court, the court shall give notice to the defendant that the court may, after a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel. The court shall also give notice that, if the court determines that the defendant has the present ability, the court shall order him or her to pay all or a part of the cost. The notice shall inform the defendant that the order shall have the same force and effect as a judgment in a civil action and shall be subject to enforcement against the property of the defendant

in the same manner as any other money judgment.

(g) As used in this section:

(1) "Legal assistance" means legal counsel and supportive services including, but not limited to, medical and psychiatric examinations, investigative services, expert testimony, or any other form of services provided to assist the defendant in the preparation and presentation of the defendant's case.

(2) "Ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her, and shall include, but not be limited to, all of the following:

(A) The defendant's present financial position.

(B) The defendant's reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining the defendant's reasonably discernible future financial position. Unless the court finds unusual circumstances, a defendant sentenced to state prison shall be determined not to have a reasonably discernible future financial ability to reimburse the costs of his or her defense.

(C) The likelihood that the defendant shall be able to obtain employment within a six-month period from the date of the hearing.

(D) Any other factor or factors which may bear upon the defendant's financial capability to reimburse the county for the costs of the legal assistance provided to the defendant.

(h) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change in circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time it renders the judgment.

(i) This section shall apply to all proceedings, including contempt proceedings, in which the party is represented by a public defender or appointed counsel

SEC. 5. Section 16472.1 of the Public Utilities Code is amended to read:

16472.1. (a) Notwithstanding Sections 16469 to 16472, inclusive, and as an alternative to the procedures specified in those sections, a district may provide by resolution or ordinance that delinquent water charges and interest and penalties thereon constitute a lien on the real property served to the extent that the property is owned by the person or entity receiving the service, when a certificate is recorded pursuant to this section, which shall continue in effect until the amount of charges, interest, and penalties are paid or the property is sold to satisfy the charges, interest, and penalties. No lien may be created under this section on any publicly owned property.

(b) A lien pursuant to this section attaches when the district files for record in the office of the county recorder a certificate specifying

the amount of charges, interest, and penalties due; the name of the owner of record of the property who received the water service; the legal description of the property served; and the fact that the district has complied with all provisions of this part in the determination of the charges, interest, and penalties due. From the time of recordation of the certificate, the charges, interest, and penalties constitute a lien on the property. Within 30 days of receipt of payment of all costs specified in subdivision (a), or within 30 days of a demand by an escrow agent in the event of a voluntary sale, the district shall record in the office of the county recorder a release of the lien created by this section.

(c) The county recorder shall charge the district the fees specified in Sections 27361 and 27361.4 of the Government Code for recording any certificate pursuant to subdivision (b), which certificate shall be indexed to the name of the property owner as grantor and the district as grantee.

(d) This section is in addition to any other remedies available to a district.

SEC. 6. Section 3114.5 of the Streets and Highways Code is amended to read:

3114.5. (a) This section applies only to community facilities districts.

(b) Within 15 days after determination pursuant to Section 53328 of the Government Code that the requisite number of voters are in favor of the levy of a special tax, the clerk of the legislative body shall execute and record a notice of special tax lien in the office of the county recorder of each county in which all or any part of the community facilities district is located, and the county recorder shall accept that notice. The county recorder shall index the notice of special tax liens to the names of the property owners within the community facilities district and shown in the notice, as grantors. The notice of special tax lien shall contain the information required by Section 27288.1 of the Government Code and shall be in substantially the following form:

NOTICE OF SPECIAL TAX LIEN

Pursuant to the requirements of Section 3114.5 of the Streets and Highways Code and Section 53328.3 of the Government Code, the undersigned clerk of the legislative body of _____, State of California, hereby gives notice that a lien to secure payment of a special tax which the (here insert name of legislative body) of (here insert city and name of county thereafter), State of California is authorized to levy is hereby imposed. The special tax secured by this lien is authorized to be levied for the purpose of: (as applicable) (1) paying principal and interest on bonds, the proceeds of which are being used to finance (briefly describe facilities financed); (2) providing (briefly described facilities financed without bonds); (3) providing (briefly described services being financed).

The special tax is authorized to be levied within Community Facilities District No. _____ which has now been officially formed and the lien of the special tax is a continuing lien which shall secure each annual levy of the special tax and which shall continue in force and effect until the special tax obligation is prepaid, permanently satisfied, and canceled in accordance with law or until the special tax ceases to be levied and a notice of cessation of special tax is recorded in accordance with Section 53330.5 of the Government Code.

The rate, method of apportionment, and manner of collection of the authorized special tax is as follows: (here insert verbatim the description of the rate, method of apportionment, and manner of collection from the resolution of formation of the community facilities district). Conditions under which the obligation to pay the special tax may be prepaid and permanently satisfied and the lien of the special tax canceled are as follows: (here insert such conditions as are set forth in the resolution of formation or, if no provision has been made for prepayment of the special tax obligation, so state).

Notice is further given that upon the recording of this notice in the office of the county recorder, the obligation to pay the special tax levy shall become a lien upon all nonexempt real property within Community Facilities District No. _____ in accordance with Section 3115 5 of the Streets and Highways Code.

The name(s) of the owner(s) of the real property included within this community facilities district as they appear on the latest secured assessment roll as of the date of recording of this notice are as follows: (insert names of owners shown on assessment roll).

Reference is made to the boundary map (or the amended boundary map) of the community facilities district recorded at Book _____ of Maps of Assessment and Community Facilities Districts at Page _____, in the office of the County Recorder for the County of _____, State of California which map is now the final boundary map of the community facilities district.

The assessor's tax parcel(s) numbers of all parcels or any portion thereof which are included within this community facilities district are as follows: (insert tax parcel number(s)).

For further information concerning the current and estimated future tax liability of owners or purchasers of real property subject to this special tax lien, interested persons should contact (here provide name, address, and telephone number of the appropriate office, department, or bureau of the public entity designated pursuant to Section 53340.1 of the Government Code)

(c) The county recorder shall endorse upon the notice the time and date of filing, and shall cross index the notice by reference to the page of the book of maps of assessment and community facilities districts in which the boundary map of the district was filed.

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 one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1218

An act to add Article 11.9 (commencing with Section 25244.12) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Article 11.9 (commencing with Section 25244.12) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:

Article 11.9. Hazardous Waste Source Reduction and Management Review Act of 1989

25244.12. This article shall be known and may be cited as the Hazardous Waste Source Reduction and Management Review Act of 1989.

25244.13. The Legislature finds and declares as follows:

(a) Existing law requires the department and the State Water Resources Control Board to promote the reduction of generated hazardous waste. This policy, in combination with hazardous waste land disposal bans, requires the rapid development of new programs and incentives for achieving the goal of optimal minimization of the generation of hazardous wastes. Substantial improvements and additions to the state's hazardous waste reduction program are required to be made if these goals are to be achieved.

(b) It is the goal of this article to do all of the following:

(1) Reduce the generation of hazardous waste.

(2) Reduce the release into the environment of chemical contaminants which have adverse and serious health or environmental effects.

(3) Document hazardous waste management information and make that information available to state and local government.

(c) It is the intent of this article to promote the reduction of hazardous waste at its source, and wherever source reduction is not

feasible or practicable, to encourage recycling. Where it is not feasible to reduce or recycle hazardous waste, the waste should be treated in an environmentally safe manner to minimize the present and future threat to health and the environment.

(d) It is the intent of the Legislature not to preclude the regulation of environmentally harmful releases to all media, including air, land, surface water, and groundwater, and to encourage and promote the reduction of these releases to air, land, surface water, and groundwater.

(e) It is the intent of the Legislature to encourage all state departments and agencies, especially the State Water Resources Control Board, the California regional water quality control boards, the State Air Resources Board, the air pollution control districts, and the air quality management districts, to promote the reduction of environmentally harmful releases to all media.

25244.14. For purposes of this article, the following definitions apply:

(a) "Appropriate local agency" means a county, city, or regional association which has adopted a hazardous waste management plan pursuant to Article 3.5 (commencing with Section 25135).

(b) "Hazardous waste management approaches" means approaches, methods, and techniques of managing the generation and handling of hazardous waste, including source reduction, recycling, and the treatment of hazardous waste.

(c) "Hazardous waste management performance report" or "report" means the report required by subdivision (b) of Section 25244.20 to document and evaluate the results of hazardous waste management practices.

(d) "Hazardous waste management performance report summary" or "report summary" means the summary required by subdivision (c) of Section 25244.20.

(e) (1) "Source reduction" means one of the following:

(A) Any action which causes a net reduction in the generation of hazardous waste.

(B) Any action taken before the hazardous waste is generated that results in a lessening of the properties which cause it to be classified as a hazardous waste.

(2) "Source reduction" includes, but is not limited to, all of the following:

(A) "Input change" which means a change in raw materials or feedstocks used in a production process or operation so as to reduce, avoid, or eliminate the generation of hazardous waste.

(B) "Operational improvement" which means improved site management so as to reduce, avoid, or eliminate the generation of hazardous waste.

(C) "Production process change" which means a change in a process, method, or technique which is used to produce a product or a desired result, including the return of materials or their components, for reuse within the existing processes or operations, so

as to reduce, avoid, or eliminate the generation of hazardous waste.

(D) "Product reformulation" which means changes in design, composition, or specifications of end products, including product substitution, so as to reduce, avoid, or eliminate the generation of hazardous waste.

(3) "Source reduction" does not include any of the following:

(A) Actions taken after a hazardous waste is generated.

(B) Actions that merely concentrate the constituents of a hazardous waste to reduce its volume or that dilute the hazardous waste to reduce its hazardous characteristics.

(C) Actions that merely shift hazardous wastes from one environmental medium to another environmental medium.

(D) Treatment.

(f) "Source reduction evaluation review and plan" or "review and plan" means a review conducted by the generator of the processes, operations, and procedures in use at a generator's site, according to the format established by the department pursuant to subdivision (a) of Section 25244.16, and which does both of the following:

(1) Determines any alternatives to, or modifications of, the generator's processes, operations, and procedures that may be implemented to reduce the amount of hazardous waste generated.

(2) Includes a plan to document and implement source reduction measures for the hazardous wastes specified in paragraph (1) which are technically feasible and economically practicable for the generator, including a reasonable implementation schedule.

(g) "Source reduction evaluation review and plan summary" or "plan summary" means the summary required by subdivision (c) of Section 25244.19.

(h) "SIC Code" has the same meaning as defined in Section 25501.

(i) "Hazardous waste," "person," "recycle," and "treatment" have the same meaning as defined in Article 2 (commencing with Section 25110).

25244.15. (a) The department shall establish a program for hazardous waste source reduction pursuant to this article.

(b) The department shall coordinate the activities of all state agencies with responsibilities and duties relating to hazardous waste and shall promote coordinated efforts to encourage the reduction of hazardous waste. Coordination between the program and other relevant state agencies and programs shall, to the fullest extent possible, include joint planning processes and joint research and studies.

(c) The department shall adopt regulations to carry out this article.

(d) (1) This article applies only to generators who, by site, routinely generate, through ongoing processes and operations, more than 12,000 kilograms of hazardous waste in a calendar year, or more than 12 kilograms of extremely hazardous waste in a calendar year.

(2) The department shall adopt regulations to establish procedures for exempting generators from the requirements of this

article where the department determines that no source reduction opportunities exist for the generator.

25244.16. On or before January 1, 1991, the department shall do both of the following:

(a) Adopt a format to be used by generators for completing the review and plan and plan summary required by Section 25244.19, and the report and the report summary required by Section 25244.20. The format shall include at least all of the factors the generator is required to include in the review and plan, the plan summary, the report, and the report summary. The department may include any other factor determined by the department to be necessary to carry out this article. The adoption of a format pursuant to this subdivision is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Establish a data and information system to be used by the department for developing the categories of generators specified in Section 25244.18, for processing and evaluating the source reduction and other hazardous waste management information submitted by generators pursuant to Section 25244.18, and for developing the program evaluation required by Section 25244.22. In establishing the data and information system, the department shall do all of the following:

(1) Establish methods and procedures for appropriately processing or managing hazardous waste source reduction and management information.

(2) Use the data management expertise, resources, and forms of already established environmental protection programs, to the extent practicable.

(3) Establish computerized data retrieval and data processing systems, including safeguards to protect trade secrets designated pursuant to Section 25244.23.

(4) Identify additional data and information needs of the program.

25244.17. The department shall establish a technical and research assistance program to assist generators in identifying and applying methods of source reduction and other hazardous waste management approaches. The program shall emphasize assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing source reduction methods, and developing and applying source reduction techniques. The program shall include at least all of the following elements, which shall be carried out by the department:

(a) The department shall encourage programs by private or public consultants, including onsite consultation at sites or locations where hazardous waste is generated, to aid those generators requiring assistance in developing and implementing the review and plan, the plan summary, the report, and the report summary required by this article.

(b) The department shall conduct review and plan assistance

programs, seminars, workshops, training programs, and other similar activities to assist generators to evaluate source reduction alternatives and to identify opportunities for source reduction.

(c) The department shall establish a program to assemble, catalogue, and disseminate information about hazardous waste source reduction methods, available consultant services, and regulatory requirements.

(d) The department shall identify the range of generic and specific technical solutions that can be applied by particular types of hazardous waste generators to reduce hazardous waste generation.

25244.18. (a) On or before September 15, 1991, and every two years thereafter, the department shall select at least two categories of generators by SIC Code with potential for source reduction, and, for each category, shall do all of the following:

(1) Request that selected generators in the category provide the department, on a timely basis, with a copy of the generator's completed review and plan, or plan summary, or both, and with a copy of the generator's completed report, or report summary, or both.

(2) Examine the review and plan or plan summary and the report or report summary of selected generators in the category.

(3) Ensure that the selected generators in that category comply with Sections 25244.19 and 25244.20.

(4) Identify successful source reduction and other hazardous waste management approaches employed by generators in the category and disseminate information concerning those approaches to generators within the category.

(b) In carrying out subdivision (a), the department shall not disseminate information determined to be a trade secret pursuant to Section 25244.23.

(c) On and after September 15, 1991, the department may request from any generator, and the generator shall provide within 30 days of the request, a copy of the generator's review and plan, plan summary, report, or report summary. The department may evaluate any of these documents submitted to the department to determine whether it satisfies the requirements of this article.

(d) If the department determines that a generator has not completed the review and plan or plan summary in the manner required by Section 25244.19, or the report or report summary in the manner required by Section 25244.20, the department shall provide the generator with a notice of noncompliance, specifying the deficiencies in the review and plan, plan summary, report, or report summary identified by the department. If the department finds that the review and plan does not comply with Section 25244.19, the department shall consider the review and plan to be incomplete. A generator shall file a revised review and plan, plan summary, report, or report summary correcting the deficiencies identified by the department within 60 days of the receipt of the notice. The department may grant, in response to a written request from the

generator, an extension of the 60-day deadline, for cause, except that the department shall not grant this extension for more than an additional 60 days.

If a generator fails to submit a revised review and plan, plan summary, report, or report summary complying with the requirements of this article within the required period, or if the department determines that a generator has failed to implement the measures included in the generator's review and plan or plan summary for reducing the generator's hazardous waste, in accordance with Section 25244.19, except as provided in subdivision (e), the department may impose civil penalties pursuant to Section 25189.3, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2, seek an order directing compliance pursuant to Section 25181, or enter into a consent agreement or a compliance schedule with the generator.

(e) If a generator fails to implement a measure specified in the review and plan, or plan summary, pursuant to paragraph (5) of subdivision (b) of Section 25244.19, the generator shall not be deemed to be in violation of Section 25244.19 for not implementing the selected measure if the generator does both of the following:

(1) The generator finds that, upon further analysis or as a result of unexpected consequences, the selected measure is not technically feasible or economically practicable, or if the selected approach has resulted in any of the following:

(A) An increase in the generation of hazardous waste.

(B) An increase in the release of hazardous chemical contaminants to other media.

(C) Adverse impacts on product quality.

(D) A significant increase in the risk of an adverse impact to human health or the environment.

(2) The generator revises the review and plan and plan summary to comply with the requirements of Section 25244.19.

(f) When taking enforcement action pursuant to this article, the department shall not judge the appropriateness of any decisions or proposed measures contained in a review and plan, plan summary, report, or report summary, but shall only determine whether the review and plan, plan summary, report, or report summary is complete, prepared, and implemented in accordance with this article.

(g) On and after September 15, 1991, an appropriate local agency which has jurisdiction over a generator's site may request from the generator, and the generator shall provide within 30 days, a copy of the generator's current review and plan, plan summary, report, and report summary.

25244.19. (a) On or before September 1, 1991, and every four years thereafter, each generator shall conduct a source reduction evaluation review and plan and a source reduction evaluation review and plan summary pursuant to subdivisions (b) and (c).

(b) Except as provided in subdivision (d), the source reduction evaluation review and plan required by subdivision (a) shall be conducted and completed for each site pursuant to the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include, at a minimum, all of the following:

(1) The name and location of the site.

(2) The SIC Code of the site.

(3) Identification of all routinely generated hazardous waste streams which result from ongoing processes or operations that have a yearly volume exceeding 5 percent of the total yearly volume of hazardous waste generated at the site, or, for extremely hazardous waste, 5 percent of the total yearly volume generated at the site.

(4) For each hazardous waste stream identified in paragraph (3), the review and plan shall include all of the following information:

(A) An estimate of the quantity of hazardous waste generated.

(B) An evaluation of source reduction approaches available to the generator which are potentially viable. The evaluation shall consider at least all of the following source reduction approaches:

(i) Input change.

(ii) Operational improvement.

(iii) Production process change.

(iv) Product reformulation.

(5) A specification of, and a rationale for, the technically feasible and economically practicable source reduction measures which will be taken by the generator with respect to each hazardous waste stream identified in paragraph (3). The review and plan shall fully document any statement explaining the generator's rationale for rejecting any available source reduction approach identified in paragraph (4).

(6) An evaluation, and, to the extent practicable, a quantification, of the effects of the chosen source reduction method on emissions and discharges to air, water, or land.

(7) A timetable for making reasonable and measurable progress towards implementation of the selected source reduction measures specified in paragraph (5).

(8) Certification pursuant to subdivision (e).

(c) The source reduction evaluation review and plan summary required by subdivision (a) shall be completed in accordance with the format adopted pursuant to subdivision (a) of Section 25244.19 and shall include the information specified in paragraphs (1), (2), (3), and (6) of subdivision (b) and a summary of the information required pursuant to paragraphs (4) and (5) of subdivision (b).

(d) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite review and plan and plan summary addressing all of these sites.

(e) Every review and plan and plan summary conducted pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a

professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the review and plan and plan summary only if the review and plan and plan summary meet all of the following requirements:

(1) The review and plan addresses each hazardous waste stream identified pursuant to paragraph (3) of subdivision (b).

(2) The review and plan addresses the source reduction approaches specified in subparagraph (B) of paragraph (4) of subdivision (b).

(3) The review and plan clearly sets forth the measures to be taken with respect to each hazardous waste stream for which source reduction has been found to be technically feasible and economically practicable, with timetables for making reasonable and measurable progress, and properly documents the rationale for rejecting available source reduction measures.

(4) The plan summary meets the requirements of subdivision (c).

(5) The review and plan and plan summary does not merely shift hazardous waste from one environmental medium to another environmental medium by increasing emissions or discharges to air, water, or land.

(f) At the time a review and plan or a plan summary is submitted to the department, the generator shall certify that the generator has implemented, is implementing, or will be implementing, the source reduction measures identified in the review and plan or the plan summary according to the implementation schedule contained in the review and plan or the plan summary. A generator may determine not to implement a measure selected in paragraph (5) of subdivision (b) only if the generator determines, upon conducting further analysis or due to unexpected circumstances, that the selected measure is not technically feasible or economically practicable, or if attempts to implement that measure reveal that the measure would result in, or has resulted in, any of the following:

(1) An increase in the generation of hazardous waste.

(2) An increase in the release of hazardous chemicals to other environmental media.

(3) Adverse impacts on product quality.

(4) A significant increase in the risk of an adverse impact to human health or the environment.

(g) If the generator elects not to implement the review and plan or plan summary, including, but not limited to, a selected measure pursuant to subdivision (f), the generator shall amend its review and plan and plan summary to reflect this rejection and include in the review and plan and plan summary proper documentation identifying the rationale for this rejection.

25244.20. (a) On or before September 1, 1991, and every four years thereafter, each generator shall prepare a hazardous waste management performance report and a hazardous waste management performance report summary documenting hazardous waste management approaches implemented by the generator.

(b) Except as provided in subdivision (e), the hazardous waste management performance report required by subdivision (a) shall be prepared for each site in accordance with the format adopted pursuant to subdivision (a) of Section 25244.16 and shall include all of the following:

(1) The name and location of the site.

(2) The SIC Code for the site.

(3) All of the following information for each waste stream identified pursuant to paragraph (3) of subdivision (b) of Section 25244.19:

(A) An estimate of the quantity of hazardous waste generated and the quantity of hazardous waste managed, both onsite and offsite, during the current reporting year and the baseline year, as specified in subdivision (d).

(B) An assessment of the effect, during the current year, of each hazardous waste management measure implemented since the baseline year, upon the generation and the onsite and offsite management of hazardous waste. The report shall consider, but shall not be limited to, measures which use all of the following approaches:

(i) Source reduction.

(ii) Recycling.

(iii) Treatment.

(C) A description of factors during the current reporting year that have affected hazardous waste generation and onsite and offsite hazardous waste management since the baseline year, including, but not limited to, any of the following:

(i) Changes in business activity.

(ii) Changes in waste classification.

(iii) Natural phenomena.

(iv) Other factors that have affected either the quantity of hazardous waste generated or onsite and offsite hazardous waste management requirements.

(4) The certification of the report pursuant to subdivision (f).

(c) The hazardous waste management performance report summary required by subdivision (a) shall be completed in accordance with the format adopted pursuant to subdivision (a) of Section 25244.16, shall provide the information specified in paragraphs (1) and (2) of subdivision (b), and a summary of the information required by paragraph (3) of subdivision (b), and shall be certified pursuant to subdivision (f).

(d) For purposes of subdivision (b), the following definitions apply:

(1) The current reporting year is the calendar year immediately preceding the year in which the report is to be prepared.

(2) The baseline year is either of the following, whichever is applicable:

(A) For the initial report, the baseline year is the calendar year selected by the generator for which substantial hazardous waste generation, or onsite or offsite management data is available, prior to 1991, except the generator may select 1990 as the baseline year. If the generator selects 1990 as the baseline year for the initial report, the information required pursuant to paragraph (3) of subdivision (b) for the initial report shall be provided for the 1990 calendar year only.

(B) For all subsequent reports, the baseline year is the current reporting year of the immediately preceding report.

(e) If a generator owns or operates multiple sites with similar processes, operations, and waste streams, the generator may prepare a single multisite report and report summary addressing all of these sites.

(f) Every report and report summary completed pursuant to this section shall be submitted by the generator for review and certification by an engineer who is registered as a professional engineer pursuant to Section 6762 of the Business and Professions Code and who has demonstrated expertise in hazardous waste management, by an individual who is responsible for the processes and operations of the site, or by an environmental assessor who is registered pursuant to Section 25570.3 and who has demonstrated expertise in hazardous waste management. The engineer, individual, or environmental assessor shall certify the report and report summary only if the report and report summary meet all of the following requirements, as applicable:

(1) The report identifies factors that affect the generation and onsite and offsite management of hazardous wastes and summarizes the effect of those factors on the generation and onsite and offsite management of hazardous wastes.

(2) The report summary complies with the requirements specified in subdivision (c).

25244.21. (a) Every generator shall retain the original of the current review and plan, plan summary, report, and report summary, shall maintain a copy of the current review and plan, plan summary, report, and report summary at each site, or, for a multisite review and plan, plan summary, report, or report summary, at a central location, and upon request, shall make it available to any authorized representative of the department conducting an inspection pursuant to Section 25185. If a generator fails, within five days, to make available to the inspector the review and plan, plan summary, report, or report summary, the department or any authorized representative of the department conducting an inspection pursuant to Section 25185, shall, if appropriate, impose a civil penalty pursuant to Section 25189.3, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2

(b) If a generator fails to respond to a request for a copy of its review and plan, plan summary, report, or report summary made by the department pursuant to subdivision (c) of Section 25244.18, or by a local agency pursuant to subdivision (g) of Section 25244 18, within 30 days from the date of the request, the department shall, if appropriate, assess a civil penalty pursuant to Section 25189.3, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2.

(c) Any person may request the department to certify that a generator is in compliance with this article by having the department certify that the generator has properly completed the review and plan, plan summary, report and report summary required pursuant to Sections 25244.19 and 25244.20. The department shall respond within 60 days to a request for certification. Upon receiving a request for certification, the department shall request from the generator, which is the subject of the request, a copy of the generator's review and plan, plan summary, report, and report summary, pursuant to subdivision (c) of Section 25244.19, if the department does not have these documents. The department shall forward a copy of the review and plan, plan summary, report, and report summary to the person requesting certification, within 10 days after the department receives the request for certification or receives the review and plan, plan summary, report, and report summary, whichever is later. The department shall protect trade secrets in accordance with Section 25244.23 in a review and plan, plan summary, report, or report summary, requested to be released pursuant to this subdivision.

This subdivision does not prohibit any person from directly requesting from a generator a copy of the review and plan, plan summary, report, or report summary. Solely for the purposes of responding to a request pursuant to this subdivision, the department shall deem the review and plan, plan summary, report, or report summary to be a public record subject to Section 25152.5, and shall act in compliance with that section.

25244.22. Commencing July 1, 1993, and every other year thereafter, the director shall prepare and submit to the Governor and the Legislature a report of the department's operations and activities in carrying out this article. The director may include this report within the report required under Section 25171. This report shall include, but not be limited to, all of the following information:

(a) An evaluation of the hazardous waste source reduction progress in the state.

(b) Recommendations for legislation.

(c) Identification of any state, federal, or private economic and financial incentives that can best accelerate and maximize the research and development of source reduction and other hazardous waste management technologies and approaches.

(d) The status, funding, and results of all research projects.

25244.23. (a) The department shall adopt regulations to ensure

that trade secrets designated by a generator in all or a portion of the review and plan, the plan summary, the report, or the report summary required by this article are utilized by the director, the department, or the local agency only in connection with the responsibilities of the department pursuant to this article, and that those trade secrets are not otherwise disseminated by the director, the department, or any authorized representative of the department, or the local agency, without the consent of the generator. However, any information shall be made available to governmental agencies for use in making studies and for use in judicial review or enforcement proceedings involving the person furnishing the information. As provided by Section 25159.5, the regulations shall conform with the corresponding trade secret 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.), except that the regulations adopted by the department may be more stringent or more extensive than the federal trade secret regulations. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commerical value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(b) The department and the appropriate local agency shall protect from disclosure any trade secret designated by the generator pursuant to this section. The department shall make available information concerning source reduction approaches that have proved successful, and which do not constitute a trade secret, when carrying out subdivision (c) of Section 25244.17 and to subdivision (a) of Section 25244.18.

(c) This section does not permit a generator to refuse to disclose the information required pursuant to this article to the department or to the appropriate local agency, except an officer or employee of the department, or the appropriate local agency, in connection with the official duties of that officer or employee under this article.

(d) Any officer or employee of the department or the appropriate local agency, or any other person, who, because of his or her employment or official position, has possession of, or has access to, confidential information, and who, knowing that disclosure of the information to the general public is prohibited by this section, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both the fine and imprisonment.

25244.24. On or before December 1, 1993, the Auditor General

shall submit a report to the Legislature, assessing the performance of the department in carrying out this article. The report shall include information on all of the following:

(a) The effectiveness of the source reduction evaluation reviews and plans in achieving a net reduction in the generation of hazardous waste.

(b) Data on the frequency of requests for certification pursuant to subdivision (c) of Section 25244.21, and an evaluation of the effectiveness and efficiency of this provision, including the department's implementation, in providing timely information to the public.

(c) Data on regulatory and enforcement activities conducted by the department pursuant to Section 25244.18, and the effectiveness of this section, including the department's implementation, in accomplishing compliance with this article.

(d) Data on the certification process required by Sections 25244.19 and 25244.20, and the effectiveness of this requirement in guaranteeing the integrity of the review and plans, plan summaries, reports, and report summaries.

25244.25. (a) On or before January 1, 1991, the department shall adopt, by regulation, a fair and equitable system for charging and collecting a fee from hazardous waste generators subject to this article. The department shall set the fee in an amount sufficient to produce revenues to efficiently and effectively implement this article, and may set the fees at a level sufficient to repay the Hazardous Waste Control Account for the initial costs of implementing this article.

(b) All fees collected pursuant to this section shall be paid to the department on or before September 1, 1991, and shall be deposited in the Hazardous Waste Control Account in the General Fund, for expenditure by the department, upon appropriation by the Legislature, to carry out this article.

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

CHAPTER 1219

An act to amend Section 15814.14 of, and to add Section 15814.20 to, the Government Code, relating to state government energy services.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 15814.14 of the Government Code is amended to read:

15814.14. (a) Any state agency may enter into a contract with the board for the purchase or exchange of thermal or electrical energy, or to acquire conservation services through the use of conservation measures, for a term not exceeding 35 years, at such rates and upon such terms as are approved by the agency and the board.

(b) The Department of General Services, with the consent of the state agency having jurisdiction over the property, or any other state agency with the approval of the Department of General Services, may lease as lessor for terms of up to 35 years any structure, building, facility, work, or land, owned or acquired by the agency, to any person, including the board, to permit the board to enter into an energy service contract with that person, or to permit the board to undertake other projects authorized under this chapter, at such rates and upon such terms as may be approved by the state agency and the board.

SEC. 2. Section 15814.20 is added to the Government Code, to read:

15814.20. The board shall not enter into leases and energy service contracts authorized under this chapter sooner than 45 days after notification in writing of the necessity therefor has been submitted to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees of each house, or sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine. At the request of the chairperson of the joint committee, the Joint Legislative Budget Committee may hold a hearing within 45 days of receipt of the notification. If a hearing is held, the affected agencies shall be provided all information available to the Joint Legislative Budget Committee at least 10 days in advance of the hearing. In the event that a hearing is conducted, the Joint Legislative Budget Committee may recommend to the board approval, modification, or rejection of leases or energy service contracts.

CHAPTER 1220

An act to add and repeal Title 7 (commencing with Section 14000) of Part 4 of the Penal Code, relating to crime, and making an appropriation therefor.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989]

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

SECTION 1. Title 7 (commencing with Section 14000) is added to Part 4 of the Penal Code, to read:

TITLE 7. CALIFORNIA CHILD VICTIM WITNESS PILOT AND DEMONSTRATION PROGRAMS

Article 1. General

14000. This title shall be known and may be cited as the California Child Victim Witness Pilot and Demonstration Programs.

14001. The Legislature finds and declares that there is a continuing need to improve the treatment of children in legal proceedings by developing methods to achieve all of the following:

(a) Eliminate unnecessary repetitive interviews and court appearances of child victim witnesses.

(b) Streamline and improve investigative and judicial practices and procedures involving child victim witnesses.

(c) Improve the truth-finding process in cases involving child victim witnesses.

(d) Protect the rights of the child victims, their families, and the accused.

14002. (a) It is the intent of the Legislature to establish up to three pilot program and demonstration projects, specifically, three investigative, judicial, and child advocacy pilot and demonstration projects, in counties to improve the treatment of child victim witnesses in legal proceedings by funding those projects for three years.

(b) The investigative pilot and demonstration projects shall incorporate the essential elements for improving and streamlining the investigative process as it affects child victim witnesses, as those elements were identified by the California Child Victim Witness Judicial Advisory Committee, created under former Section 14152. Those elements shall include the following:

(1) Interviewing children in a child oriented setting.

(2) Using a child interview specialist to conduct comprehensive interviews with children.

(3) Developing interdisciplinary child interview protocols.

(4) Memorializing the comprehensive interview to eliminate or

minimize the need for subsequent interviews.

(5) Conducting multidisciplinary team reviews to make recommendations on child abuse cases and the needs of child victim witnesses.

(6) Ensuring that initial medical evidentiary examinations of suspected child abuse victims are conducted by medical professionals with expertise in diagnosing child abuse.

(7) Assigning a child advocate.

(8) Providing appropriate mental health services.

(c) The judicial pilot and demonstration projects shall incorporate the California Child Victim Witness Judicial Advisory Committee's proposals for streamlining and improving California's judiciary as it affects child victim witnesses and their families, including all of the following:

(1) Restructuring the superior court to create a family relations division coequal with the civil and criminal divisions.

(2) Developing special relationships among different courts.

(3) Addressing the special problems relating to child victim witnesses in the courts.

(d) The child advocacy pilot and demonstration projects shall provide a full range of advocacy and support services to child victim witnesses throughout all investigative and judicial proceedings, including providing a knowledgeable, caring person who shall undertake each of the following:

(1) Overseeing the child's emotional well-being and best interests.

(2) Protecting the child's legal rights.

(3) Identifying other advocacy services for the child.

Article 2. California Child Victim Witness Pilot and Demonstration Programs

14005. There is hereby established a three-year pilot program in the office of the Attorney General, and a three-year pilot program in the Judicial Council, which programs shall be known as the California Child Victim Witness Pilot and Demonstration Programs. The program operated by the office of the Attorney General shall consist of an investigative pilot and demonstration program, and the program operated by the Judicial Council shall consist of judicial and child advocacy pilot and demonstration programs. Each program shall operate in up to three counties which have made application to and have been designated by the administering agency of the respective programs.

14006. The office of the Attorney General and the Judicial Council shall, after consultation and coordination with each other, determine the counties in which the respective projects will be operated. Each shall give preference for selection of the pilot projects to those counties willing to operate all three pilot and demonstration projects, or alternatively to counties which otherwise

provided the most comprehensive proposals for the projects.

Article 3. Investigative Pilot and Demonstration Projects

14008. The office of the Attorney General shall establish and fund from moneys appropriated by the Legislature for purposes of this article up to three investigative pilot and demonstration projects for a three-year period in order to implement and evaluate the recommendations of the California Child Victim Witness Judicial Advisory Committee. Each county investigative pilot and demonstration project designated by the Attorney General should:

(a) Require the mandatory use of videotaping of the comprehensive child victim interview, with the understanding and agreement of the child. This videotaping shall be conducted only after initial interviews and contacts have been made, if necessary, by the district attorney, local law enforcement agencies, or social services agencies.

(b) Establish a child victim witness center or centers, or special interview settings.

(c) Develop interagency agreements and protocols for interviewing child victims, including procedures to limit the number of interviewers and minimize the number of interviews.

(d) Train child interview specialists selected by a team composed of representatives from the district attorney's office, local law enforcement agencies, and social services agencies.

(e) Require that comprehensive interviews be conducted by a child interview specialist.

(f) Establish procedures for maintaining the confidentiality of audio and video tape interviews of child victim witnesses.

(g) Establish multidisciplinary teams to review and make recommendations on child abuse cases and the needs of child victim witnesses.

(h) Adopt procedures to ensure that initial medical evidentiary examinations of suspected child abuse victims are conducted by a medical professional with expertise in diagnosing child abuse, and that the results of the examination are used in the judicial process, so long as the results are otherwise admissible under law, and in the development of medical treatment plans for the child.

(i) Develop procedures for providing mental health services for child victim witnesses

Article 4. Judicial Pilot and Demonstration Projects

14010. The Judicial Council shall establish and fund from moneys appropriated by the Legislature for purposes of this article up to three judicial demonstration projects for a three-year period in order to implement and evaluate the recommendations of the California Child Victim Witness Judicial Advisory Committee. Each county judicial pilot and demonstration project designated by the Judicial

Council shall:

(a) Restructure the superior court to create a family relations division grouping civil, child, family, and human relations-oriented legal actions within that division. The family relations division shall be coequal with the civil and criminal divisions with a supervising judge. The administrative support, including staffing, of the family relations division shall be no less than the level of administrative support of the civil or criminal divisions. However, if the administrative support for the juvenile, probate, civil, and family court proceedings to be processed by the family relations division is, prior to the implementation of this act, at a level which is higher than the administrative support of the civil or criminal divisions, then the administrative support for the family relations division shall be no less than the above-specified level of administrative support for the juvenile, probate, civil, and family court which existed prior to the implementation of this act. Restructuring plans shall include the following elements:

(1) Policies which ensure that judges are assigned to the family relations division for substantial periods of time and that they are selected based upon interest and ability.

(2) Procedures to enable, to the maximum extent possible, one judge to hear all actions in the family relations division relating to a child victim witness, and to enable the judge to combine hearings whenever it is appropriate.

(3) A plan to educate family relations court judges in all of the legal proceedings which may be heard within the division and in family dynamics and child development.

(4) Protective orders to protect children who appear in any division of the family relations court and to protect against unauthorized disclosure of audio or video tape interviews or testimony of a child victim witness.

(b) Develop formal relationships among court systems, including the following:

(1) Developing efficient means for courts and court systems to communicate with each other regarding proceedings involving the same child or family, including effective methods for the immediate transmission of court orders.

(2) Developing effective methods for exchanging information among investigative and supervisory agencies serving the court to ensure that all relevant information concerning the child or family is before the court.

(3) Developing special procedures for coordination and cooperation in case management when a child is involved in criminal and dependency proceedings, domestic relations and dependency proceedings, dependency and delinquency proceedings, or related domestic violence proceedings.

(c) Address special problems relating to child victim witnesses, including the following:

(1) Developing guidelines for managing courtroom examinations

of child witnesses for the purposes of reducing the child's stress and eliciting more accurate testimony.

(2) Developing procedures for appointing a child development expert, when appropriate, to advise the court in developing guidelines for courtroom examination of a child in all legal proceedings.

(3) Developing guidelines for controlling access to children who are victims or witnesses in legal proceedings.

(4) Modifying courts and courtrooms to accommodate the needs of children and families when possible.

Article 5. Child Advocacy Pilot and Demonstration Projects

14012. The Judicial Council shall establish and fund from moneys appropriated by the Legislature for purposes of this article up to three child advocacy demonstration projects for a three-year period in order to implement and evaluate the recommendations of the California Child Victim Witness Judicial Advisory Committee. Each county child advocacy demonstration project shall:

(a) Establish a child advocacy program or office to provide a full range of advocacy and support services to child victim witnesses throughout investigative and judicial proceedings.

(b) Provide to each child victim witness a knowledgeable, caring person whose primary responsibility is to guide the child through the difficult investigative and court processes, to look out for the child's emotional well-being and best interests, to protect the child's legal rights, and to identify other advocacy services for the child.

(c) (1) Make available to each child victim witness an attorney trained in the representation of the child's interests. This attorney shall not have standing to represent the child's interests before the court and jury in criminal cases. However, each county child advocacy demonstration project shall establish procedures to receive information and advice from the attorney where the attorney believes it is necessary to protect the rights and best interests of the child.

(2) Subject to the restrictions in paragraph (1) on the attorney's standing, the attorney shall have the same rights and limitations in representing the interests of the child as an attorney representing the interests of any nonparty in criminal proceedings.

(d) Require that attorneys for children in family relations actions continue, to the maximum extent possible, to represent children in related proceedings and in relations with other agencies such as schools, mental health agencies, regional centers, and community services agencies.

(e) Ensure that children receive all necessary mental health services and are not harmed by the system itself.

(f) Provide multiple support services for child victim witnesses.

Article 6. Research and Evaluation

14013. Each administering agency shall establish a Research and Evaluation Advisory Panel consisting of at least five panel members, which panels shall coordinate the research design, operation, and evaluation of the pilot and demonstration projects. By June 30, 1990, the panels shall establish procedures for determining and describing current investigative, judicial, and child advocacy services and their costs, and for measuring the advantages, disadvantages, and associated cost savings, if any, of the changes in those services affected by the pilot and demonstration projects. The panels shall ensure uniformity of data collection in the various projects so that valid comparisons can be drawn, and ensure that the project evaluation is carried out in a manner that allows for valid and unambiguous conclusions.

14014. (a) Each investigative pilot and demonstration project shall collect the following baseline data either for a period of six months before the commencement of the project or during the operation of the project so long as there is a randomly selected and statistically valid comparison group of those served and not served by the project:

(1) The number and identity of the interviewers, the number and length of interviews, and the optimal number of interviews for each child victim witness.

(2) The number and type of interview settings, and the optimal number of interview settings, for each child victim witness.

(3) The number of medical examinations of suspected child abuse victims and the type of medical tests and procedures conducted, including the number of initial medical evidentiary examinations conducted by medical professionals with an expertise in diagnosing child abuse and their qualifications.

(4) The number of interviews of child victim witnesses that are videotaped or audiotaped.

(5) The number and percentage of child abuse cases that receive multidisciplinary team reviews, the qualifications of the members of the teams, and the results of the interviews.

(6) A description of any established interagency procedures or protocols for interviewing child victim witnesses.

(7) A description of any established procedures for selecting and training child interviewers.

(8) A description of any established procedures for ensuring the confidentiality of audiotape and videotape interviews of child victim witnesses.

(9) A description of any established procedures for providing mental health or other support services to child victim witnesses.

(10) Data on perceptions of the investigative process, including the number and quality of interviewers, interviews, interview settings, and medical examinations, and the availability of mental health or other support services.

(11) Any other information appropriate to collect.

(b) The panel appointed by the office of the Attorney General shall evaluate the investigative pilot and demonstration project in each county for the purpose of determining whether each project has been successful in meeting the following goals or objectives:

(1) Reducing the number of interviewers and the number of interviews after the initial interview for child victim witnesses by at least 25 percent.

(2) Reducing the number of interview settings for child victim witnesses by at least 50 percent.

(3) Reducing the number of medical examinations of suspected child abuse victims after the initial examination by at least 25 percent.

(4) Videotaping 100 percent of the interviews of child victim witnesses who agree to be videotaped.

(5) Conducting multidisciplinary team reviews in 100 percent of the child abuse cases.

(6) Developing interagency agreements and protocols for interviewing child victim witnesses, focusing on reducing the stress on the child caused by the investigation

(7) (A) Providing 40 hours of training to child interview specialists selected by a team composed of representatives from the district attorney's office, local law enforcement agencies, and social services agencies.

(B) Improving the qualifications, selection process, and training of interviewers.

(8) Establishing or improving procedures for maintaining the confidentiality of audiotape and videotape interviews of child victim witnesses.

(9) Developing procedures for providing mental health and other support services to child victim witnesses.

(10) Reducing the traumatic impact of the investigative process on the minor by 30 percent.

(c) The panel appointed by the office of the Attorney General shall collect data from each investigative pilot and demonstration project for purposes of comparing the costs for child victim witnesses not served by the project Savings will be measured by costs related to, but not limited to, the reduction in the number of interviewers, interview settings, and medical examinations, and other savings associated with coordination efforts.

14015. The panel appointed by the Judicial Council shall evaluate each judicial pilot and demonstration project to determine whether the goals and objectives specified in Section 14001 and subdivision (c) of Section 14002 have been met. The evaluation and goals shall include:

(a) The effect of court restructuring on tracking, coordination, and consolidating proceedings in the family relations division involving the same child or family, including whether court restructuring, coordinating, and consolidating of procedures and

actions involving the same child or family in the family relations division produces a 20-percent decrease in the average number of court hearings involving a child who may be a minor as defined in Section 300 of the Welfare and Institutions Code, a decrease of 30 percent in the amount of time this minor spends awaiting and attending court hearings, a 20-percent reduction in the duplication or overlap of services for children, and a measurable increase in the level of satisfaction with the legal process, as reported by children, families, attorneys, judges, and other groups and individuals involved in the process.

(b) The effect of existing and newly established formal relationships between the court system on the management of cases involving child victim witnesses, including whether newly instituted case management strategies and techniques diminish by 30 percent the traumatic impact on minors of courtroom appearances, and increase by 30 percent the number of children permitted to testify in court.

(c) The effect of special child victim witness courtroom management strategies and techniques on the child's emotional state, including whether newly instituted rules controlling access to, and protecting the emotional and physical well-being of, minors reduce by 30 percent the number of contacts within the court setting, including court appearances and excluding the contacts with the child advocate appointed to protect the child.

(d) The cost of providing special services, techniques, and physical plants for the pilot and demonstration program, their benefit to the justice system, and their potential utilization in a cost-beneficial manner to other proceedings.

14016. The panel appointed by the Judicial Council shall evaluate each child advocacy pilot and demonstration project to determine whether the goals and objectives specified in Section 14001 and subdivision (d) of Section 14002 have been met. The evaluation and goals shall include:

(a) Whether 100 percent of the minors, who are involved in at least two related court proceedings, are provided a capable and supportive child advocate, the number of other minors provided a child advocate, the types of services performed by each advocate, the cost of that service, and the benefit to each minor and the justice system. If an advocate was not provided, an explanation of why not shall be included.

(b) Whether an attorney was available throughout the proceeding to the child advocate or the minor, the nature and extent of services provided, the source of funds for services, cost of services, and the number of contacts.

(c) Whether each minor subject to the projects was provided all necessary mental health services, the nature and extent of the mental health and other support services recommended for, and those actually provided to, the minor, the cost of services provided, the source of payments for those services, whether future mental

health services will be likely to be necessary, and whether there exists a source for their payment.

(d) Whether the provision of the services to the minor minimize the traumatic impact of the court proceedings.

(e) Whether the project has increased the use of volunteers in providing support services to the courts by at least 40 percent and whether the volunteers have made contributions beyond their direct provision of services and what these contributions are, and whether the use of volunteers has created any problems of undesirable side effects and what those are, including the costs of arranging and providing those services.

(f) Any other information the Judicial Council or advisory panels determine is appropriate.

14017. Not later than July 1, 1994, the Attorney General and the Judicial Council shall report to the Legislature on the results of each of the pilot and demonstration projects. The reports shall include the evaluations of the Research and Evaluation Advisory Panels, recommendations as to whether the techniques utilized in the pilot and demonstration projects should be required or encouraged on a statewide basis, and how any expenses related to the changes should be financed. Recommended changes in the law shall be included in the reports.

14020. Nothing in this title shall alter or impair the existing statutory authority of a district attorney to determine whether a criminal complaint should be filed and prosecuted, or of a county welfare department or probation officer to determine whether a petition to declare a minor a dependent child of the court should be filed, or, except as expressly stated, of law enforcement agencies, probation officers, or county welfare departments to determine whether additional interviews should be conducted.

14021. This title shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 2. The sum of eighty-three thousand dollars ($83,000) is hereby appropriated from the General Fund to the Controller, to be allocated to the Department of Justice and the Judicial Council according to the schedule set forth in this section for staff assistance and operational expenses incurred in connection with establishing and implementing the California Child Victim Witness Pilot and Demonstration Programs created by Title 7 (commencing with Section 14000) of Part 4 of the Penal Code.

(a) The sum of twenty-six thousand five hundred dollars ($26,500) shall be allocated to the Department of Justice.

(b) The sum of fifty-six thousand five hundred dollars ($56,500) shall be allocated to the Judicial Council.

CHAPTER 1221

An act to add Section 14132aa to the Welfare and Institutions Code, relating to Medi-Cal, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

I am deleting the $1,250,000 General Fund appropriation contained in Section 3 of Senate Bill No 276

This bill would establish, as a California Medical Assistance (Medi-Cal) Program benefit, the services provided by facilities licensed as congregate living health facilities to individuals diagnosed as having acquired immune deficiency syndrome

A change in federal law will be required before the provisions of this bill can become operative Therefore, the appropriation in this bill is premature and unwarranted until federal financial participation is assured

With this deletion, I approve Senate Bill No 276

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 14132aa is added to the Welfare and Institutions Code, to read:

14132aa. (a) Services provided by facilities licensed as congregate living health facilities to individuals diagnosed as having acquired immune deficiency syndrome (AIDS), are a covered benefit under this chapter, subject to utilization controls.

(b) Congregate living health facilities shall be reimbursed for services covered by this section at a rate set by the department and the provision of those services shall be subject to audit.

(c) This section shall be operative only to the extent that federal medicaid financial participation is made available pursuant to Subchapter XIX (commencing with Section 1396) of Title 42 of the United States Code.

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

(a) The Barlow Hospital in the County of Los Angeles and the Coming Home Hospice in San Francisco are among the first congregate living health facilities to be licensed in California and are unique pilot projects for providing services to persons with acquired immune deficiency syndrome (AIDS).

(b) The congregate living health facility located at the Barlow Hospital has met state licensing standards but cannot meet federal licensing standards and therefore will not be eligible for federal participation.

(c) The Coming Home Hospice also meets state licensing standards but will be unable to meet federal licensing standards.

SEC. 3. The sum of one million two hundred fifty thousand dollars ($1,250,000) is appropriated from the General Fund to the Office of AIDS in the State Department of Health Services. Of this amount, two hundred seventy-five thousand dollars ($275,000) shall be for allocation to the congregate living health facility located at Barlow Hospital, three hundred thousand dollars ($300,000) for

operating expenses of the AIDS hospice facility in south central Los Angeles, four hundred thousand dollars ($400,000) for an operating grant for an AIDS hospice on the grounds of Metropolitan State Hospital, and two hundred seventy-five thousand dollars ($275,000) shall be for allocation to the Coming Home Hospice operated by the Visiting Nurses' Hospice of San Francisco, for the purpose of providing services to persons with AIDS.

CHAPTER 1222

An act to amend Section 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every bank and corporation subject to tax under this chapter shall be subject to the minimum tax specified in this section from the date of incorporation or the date of commencing to do business within this state, whichever applies, until the effective date of dissolution or withdrawal as provided in Section 23331. Every bank and corporation subject to tax under this chapter and not expressly exempted by the provisions of this part or the Constitution of this state shall pay annually to the state a minimum tax of not less than one hundred dollars ($100), except as provided in subdivision (b).

(b) (1) Credit unions shall not be subject to the minimum tax specified in this section.

(2) The following corporations shall pay annually to the state a minimum tax of not less than:

(A) Twenty-five dollars ($25) for a corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) Twenty-five dollars ($25) for a corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(C) For the purpose of subparagraphs (A) and (B) a corporation shall not be considered to have done business if it engages in other than mining.

(c) For income years beginning after December 31, 1971, the one hundred dollars ($100) specified in subdivision (a) shall be two hundred dollars ($200) instead of one hundred dollars ($100).

(d) For income years beginning after December 31, 1986, the one hundred dollars ($100) specified in subdivision (a) shall be three hundred dollars ($300) instead of one hundred dollars ($100).

(e) For income years beginning after December 31, 1988, the one hundred dollars ($100) specified in subdivision (a) shall be six hundred dollars ($600) instead of one hundred dollars ($100).

(f) For income years beginning after December 31, 1989, the one hundred dollars ($100) specified in subdivision (a) shall be eight hundred dollars ($800) instead of one hundred dollars ($100).

SEC. 2. 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 be operative only for income years beginning after December 31, 1989.

CHAPTER 1223

An act to amend Section 6015 of, to amend and repeal Sections 6012 and 6013 of, and to add Sections 6012.5 and 6013.1 to, the Business and Professions Code, relating to attorneys.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. Section 6012 of the Business and Professions Code is amended to read:

6012. For the purpose of conducting elections of the attorney members of the board, the state shall be divided into State Bar districts constituted by combining counties and designated by numbers, as follows:

(a) State Bar District No. 1, comprising the following counties: Del Norte, Humboldt, Mendocino, Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra, Tehama, Glenn, Colusa, Butte, Yuba, Sutter, Lake, Nevada and Placer.

(b) State Bar District No. 2, comprising the following counties: El Dorado, Amador, Calaveras, Alpine, Tuolumne, Mariposa, Marin, Mono, Sacramento, San Joaquin, Yolo, Napa, Solano, and Sonoma.

(c) State Bar District No. 3, comprising the following counties: Contra Costa, Alameda and Santa Clara.

(d) State Bar District No. 4, comprising the City and County of San Francisco

(e) State Bar District No. 5, comprising the following counties: Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern.

(f) State Bar District No. 6, comprising the following counties: San Mateo, Santa Cruz, San Benito, Monterey, San Luis Obispo, Santa Barbara and Ventura.

(g) State Bar District No. 7, comprising the County of Los

Angeles.

(h) State Bar District No. 8, comprising the following counties: Inyo, Orange, Riverside, and San Bernardino.

(i) State Bar District No. 9, comprising the following counties: Imperial and San Diego.

This section shall remain in effect until July 1, 1990, and on that date is repealed, unless a later enacted statute, which is enacted before July 1, 1990, deletes or extends that date.

SEC. 2. Section 6012.5 is added to the Business and Professions Code, to read:

6012.5. Notwithstanding any other provision of law, beginning July 1, 1990, and every 10 years thereafter, the board shall adjust the counties included in the State Bar Districts as they existed on June 30, 1990, and shall provide for the election of attorney members of the board from those districts. The primary consideration to be employed when adjusting the counties included in the State Bar Districts shall be the development of an equitable distribution of attorney members to governors in each district, except for the district containing rural counties such as those contained in State Bar District No. 1 as it existed on June 30, 1990.

SEC. 3. Section 6013 of the Business and Professions Code is amended to read:

6013. The attorney membership of the board is composed of:

(a) One member from each of State Bar Districts 1, 2, 5, 6, 8, and 9.

(b) Two members from each of State Bar Districts 3 and 4.

(c) Five members from State Bar District 7.

(d) One member from the membership of the California Young Lawyers Association appointed pursuant to Section 6013.4.

This section shall remain in effect until July 1, 1990, and on that date is repealed, unless a later enacted statute, which is enacted before July 1, 1990, deletes or extends that date.

SEC. 4. Section 6013.1 is added to the Business and Professions Code, to read:

6013.1. The attorney membership of the board is composed of:

(a) Fifteen members to be elected from the State Bar Districts created by the board pursuant to Section 6012.5

(b) One member from the membership of the California Young Lawyers Association appointed pursuant to Section 6013.4.

This section shall become operative on July 1, 1990.

SEC. 5. Section 6015 of the Business and Professions Code is amended to read.

6015 No person is eligible for attorney membership on the board unless he or she is an active member of the State Bar and unless he or she maintains his or her principal office for the practice of law within the State Bar district from which he or she is elected.

CHAPTER 1224

An act to amend Sections 1773.5, 1775, and 1777.5 of, to add Sections 1720.4, 1771.5, 1771.6, 1771.7, and 1777.1 to, and to repeal and add Section 1777.7 of, the Labor Code, relating to public works.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 1720.4 is added to the Labor Code, to read:

1720.4. For the limited purposes of this chapter, "public works" shall not include any otherwise covered work which meets all the following conditions:

(a) The work is performed entirely by volunteer labor.

(b) The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sports groups or associations.

(c) The work will not have an adverse impact on employment.

(d) The work is approved by the Director of Industrial Relations as meeting the requirements of this section

For purposes of subdivision (c), the director shall request information on whether or not the work will have an adverse impact on employment from the appropriate local or state organization of duly authorized employee representatives of workers employed on public works.

SEC. 2. Section 1771.5 is added to the Labor Code, to read:

1771.5. (a) Nothwithstanding Section 1771, an awarding body shall not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars ($15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll

containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

SEC. 3. Section 1771.6 is added to the Labor Code, to read:

1771.6. Notwithstanding Sections 1730, 1731, and 1734, any political subdivision which enforces this chapter in accordance with Section 1771.5 shall, at the expiration of 90 days after the completion of the contract and the formal acceptance of the job, deposit all penalties or forfeitures withheld from any contract payment in the general fund of the political subdivision. Any court collecting any fines or penalties under the criminal provisions of this chapter, or any of the labor laws pertaining to public works, when the fines and penalties resulted from enforcement actions by a political subdivision pursuant to Section 1771.5, shall deposit the fines or penalties in the general fund of the political subdivision.

SEC. 4. Section 1771.7 is added to the Labor Code, to read:

1771.7. A contractor may appeal an enforcement action by a political subdivision pursuant to Section 1771.5 to the Director of Industrial Relations. Any ruling by the director shall be final and, notwithstanding Section 1732, any appeal shall waive the contractor's right to bring court action on the same issue.

SEC. 5. Section 1773.5 of the Labor Code is amended to read:

1773.5. The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

SEC. 6. Section 1775 of the Labor Code is amended to read:

1775. The contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or a contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the

amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

To the extent that there is insufficient money due a contractor to cover all penalties forfeited and amounts due in accordance with this section, or in accordance with Section 1813, and in all cases where the contract does not provide for a money payment by the awarding body to the contractor, the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the Division of Labor Standards Enforcement, if necessary with the assistance of the awarding body, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided in this section. This action shall be commenced not later than 90 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 90 days after acceptance of the public work, whichever last occurs. No issue other than that of the liability of the contractor for the penalties allegedly forfeited and amounts due shall be determined in the action, and the burden shall be upon the contractor to establish that the penalties and amounts demanded in the action are not due.

Out of any money withheld, recovered, or both there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both to pay each worker in full, the money shall be prorated among all workers.

SEC. 7. Section 1775 of the Labor Code is amended to read:

1775. The employer shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or under subcontract by the subcontractor. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or a contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the employer, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

To the extent that there is insufficient money due an employer to cover all penalties forfeited and amounts due in accordance with this section, or in accordance with Section 1813, and in all cases where the contract does not provide for a money payment by the awarding body to the employer, the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the Division of Labor Standards Enforcement, if necessary with the assistance of the awarding body, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due under this section. This action shall be commenced not later than six months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than six months after acceptance of the public work, whichever last occurs. No issue other than that of the liability of the employer for the penalties allegedly forfeited and amounts due shall be determined in the action, and the burden shall be upon the employer to establish that the penalties and amounts demanded in the action are not due.

Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker and if insufficient funds are withheld, recovered, or both, to pay each worker in full, the money shall be prorated among all the workers.

"Employer," as used in this section, means the contractor or the subcontractor, whichever one employs the worker.

SEC. 8 Section 1775 of the Labor Code is amended to read:

1775. The contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or a contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

To the extent that there is insufficient money due a contractor to cover all wages and penalties forfeited and amounts due in accordance with this section, or in accordance with Section 1813, and

in all cases where the contract does not provide for a money payment by the awarding body to the contractor, the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the Division of Labor Standards Enforcement, if necessary with the assistance of the awarding body, may maintain an action in any court of competent jurisdiction to recover the wages and penalties due under this section. This action shall be commenced not later than 90 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 90 days after acceptance of the public work, whichever last occurs. The division may maintain a court action whether or not it has an assignment of the wage claim of the worker. No issue other than that of the liability of the contractor for the wages and penalties due shall be determined in the action, and the burden shall be upon the contractor to establish that the penalties demanded in the action are not due.

Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker and if insufficient funds are withheld, recovered, or both, to pay each worker in full, the money shall be prorated among all the workers.

SEC. 9. Section 1775 of the Labor Code is amended to read:

1775. The employer shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or under subcontract by the subcontractor. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or a contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the employer, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

To the extent that there is insufficient money due an employer to cover all wages and penalties forfeited and amounts due in accordance with this section, or in accordance with Section 1813, and in all cases where the contract does not provide for a money payment by the awarding body to the, employer the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the Division of Labor Standards Enforcement, if necessary with

the assistance of the awarding body, may maintain an action in any court of competent jurisdiction to recover the wages and penalties due under this section. This action shall be commenced not later than six months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than six months after acceptance of the public work, whichever last occurs. The division may maintain a court action whether or not it has an assignment of the wage claim of the worker. No issue other than that of the liability of the employer for the wages and penalties due shall be determined in the action, and the burden shall be upon the employer to establish that the wages and penalties demanded in the action are not due.

Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker and if insufficient funds are withheld, recovered, or both, to pay each worker in full, the money shall be prorated among all the workers.

"Employer," as used in this section, means the contractor or the subcontractor, whichever one employs the worker.

SEC. 10. Section 1777.1 is added to the Labor Code, to read:

1777.1. (a) Whenever any contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, except Section 1777.5, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest shall be ineligible to bid on or to receive any public works contract for a period of not less than one year or more than three years. The period of debarment shall run from the date the determination of the violation is made by the Labor Commissioner.

(b) Whenever any contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in willful violation of this chapter, except Section 1777.5, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest shall be ineligible to bid on or to receive any public works contract for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation of this chapter. These periods of debarment shall run from the date the determination of the violation is made by the Labor Commissioner.

(c) Any determination by the Labor Commissioner shall be made after a full investigation by the Labor Commissioner and a fair and impartial hearing and reasonable notice.

(d) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(e) The Labor Commissioner shall promulgate rules and regulations for the administration and enforcement of this section,

the definition of terms, and appropriate penalties.

SEC. 11. Section 1777.5 of the Labor Code is amended to read:

1777.5. Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3, are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. Every contractor and subcontractor shall submit contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentices

work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

The contractor or subcontractor, if he or she is covered by this section, upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by a journeyman, or in the land surveyor classification, one apprentice for each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000) or 20 working days. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week, shall not be used to calculate the hourly ratio required by this section.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(a) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(b) The number of apprentices in training in such area exceeds a

ratio of 1 to 5.

(c) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis, or on a local basis.

(d) Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When exemptions are granted to an organization which represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

A contractor to whom the contract is awarded, or any subcontractor under him or her, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Section 227.

The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

All decisions of the joint apprenticeship committee under this section are subject to Section 3081.

SEC. 12. Section 1777.7 of the Labor Code is repealed.

SEC. 13. Section 1777.7 is added to the Labor Code, to read:

1777.7. (a) In the event a contractor or subcontractor willfully fails to comply with Section 1777.5, the Director of Industrial Relations shall deny to the contractor or subcontractor, both individually and in the name of the business entity under which the contractor or subcontractor is doing business, the right to bid on, or to receive, any public works contract for a period of up to one year

for the first violation and for a period of up to three years for the second and subsequent violations. Each period of debarment shall run from the date the determination of noncompliance by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council.

(b) A contractor or subcontractor who violates Section 1777.5 shall forfeit as a civil penalty the sum of fifty dollars ($50) for each calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(c) In lieu of the penalty provided for in subdivision (a) or (b), the director may for a first time violation and with the concurrence of the joint apprenticeship committee, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(e) The interpretation and enforcement of Section 1777.5 and this section shall be in accordance with the rules and procedures of the California Apprenticeship Council.

SEC. 14. (a) Section 7 of this bill incorporates amendments to Section 1775 of the Labor Code proposed by both this bill and AB 254. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 1775 of the Labor Code, and (3) SB 197 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 254, in which case Sections 6, 8, and 9 of this bill shall not become operative.

(b) Section 8 of this bill incorporates amendments to Section 1775 of the Labor Code proposed by both this bill and SB 197. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 1775 of the Labor Code, (3) AB 254 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 197 in which case Sections 6, 7, and 9 of this bill shall not become operative.

(c) Section 9 of this bill incorporates amendments to Section 1775 of the Labor Code proposed by this bill, AB 254, and SB 197. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 1775 of the Labor Code, and (3) this bill is enacted after AB 254 and SB 197, in which case Sections 6, 7, and 8 of this bill shall not become operative.

CHAPTER 1225

An act to add Chapter 2.5 (commencing with Section 4240) to Part 2 of Division 4 of the Welfare and Institutions Code, relating to mental health, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Chapter 2.5 (commencing with Section 4240) is added to Part 2 of Division 4 of the Welfare and Institutions Code, to read:

CHAPTER 2.5. FAMILIES OF PERSONS WITH SERIOUS MENTAL DISORDERS

4240. The Legislature finds and declares all of the following:

(a) The symptoms and behaviors of persons with serious mental disorders may cause severe disruption of normal family relationships.

(b) Families are often the principal caregivers, housing providers, and case managers for family members with serious mental disorders.

(c) Families of persons with serious mental disorders more often than not have little or no legal authority over their adult mentally disordered and sometimes difficult to manage family members and consequently need advice, skills, emotional support, and guidance to cope with the stressful burden of caregiving in order to be effective and helpful.

(d) Involved families are of inestimable value to the publicly funded and professionally operated state and county mental health system and programs emphasizing self-help can be the best way to assist families in maintaining the cohesion of family life while caring for and assisting a mentally disordered family member.

(e) Since the state's mental health resources are limited and are increasingly being directed on a priority basis toward provision of services to persons with serious mental disorders, informed and active families helping one another can effectively extend and amplify the value of state mental health dollars.

4241. It is the intent of the Legislature, by this chapter, to support an organized program of self-help in which families exchange information, advice, and emotional support to enable them to maintain and strengthen family life and secure or provide more effective treatment, care, and rehabilitation for mentally disordered family members.

It is further the intent of the Legislature to utilize an existing organized statewide network of families, who have mentally disordered family members, as a means of delivering the services

designated in this chapter.

4242. As used in this chapter:

(a) "Family" means persons whose children, spouses, siblings, parents, grandparents, or grandchildren have a serious mental disorder.

(b) "Serious mental disorder" means a mental disorder which is severe in degree and pesistent in duration and which may cause behavioral disorder or impair functioning so as to interfere substantially with activities of daily living. Serious mental disorders include schizophrenia, major affective disorders, and other severely disabling mental disorders.

4243. (a) All funds appropriated for the purposes of this chapter shall be used to contract with an organization to establish a statewide network of families who have mentally disordered family members for the purpose of providing information, advice, support, and other assistance to these families.

(b) A request for proposal shall be issued seeking applicants who are capable of supplying the services specified in Section 4244. The respondent organizations shall demonstrate that they:

(1) Focus their activities exclusively on the seriously mentally disordered.

(2) Have experience in successfully working with state agencies, including, but not limited to, the State Department of Mental Health.

(3) Have the ability to reach and involve the target population as active members.

(4) Have proven experience providing structured self-help services that benefit the target population.

(5) Have experience holding statewide and local conferences to educate families and professionals regarding the needs of the mentally disordered.

(6) Have the financial and organizational structure and experience to manage the funds provided under the proposed contract.

4244. The Director of Mental Health shall enter into a contract with the successful bidder to provide services which shall include, but not be necessarily limited to, all of the following:

(a) Production and statewide dissemination of information to families regarding methods of obtaining and evaluating services needed by mentally disordered family members.

(b) Provision of timely advice, counseling, and other supportive services to assist families in coping with emotional stress and to enable them to care for or otherwise assist mentally disordered family members.

(c) Organizing family self-help services in local communities, accessible to families throughout the state.

(d) Conducting training programs for mental health practitioners and college and university students to inform current and future mental health professionals of the needs of families and methods of

utilizing family resources to assist mentally disordered clients.

4245. Contracts entered in pursuant to this chapter shall:

(a) Have an annual contract period from July 1 through June 30 of each fiscal year unless the Director of Mental Health or the contractor terminates the contract earlier.

(b) Require an annual report by the contractor accounting for all expenditures and program accomplishments.

SEC. 2. The sum of one hundred forty-five thousand dollars ($145,000) is hereby appropriated from the General Fund to the State Department of Mental Health for the purposes of Chapter 2.5 (commencing with Section 4240) of Part 2 of Division 4 of the Welfare and Institutions Code.

CHAPTER 1226

An act to add Article 7.6 (commencing with Section 10405) to Chapter 2 of Part 2 of Division 2 of the Public Contract Code, and to amend Section 3470 of, to add Sections 3471 and 3472 to, and to repeal Sections 3464 and 3468 of, the Public Resources Code, relating to recycled oil, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) In 1986, the Legislature enacted Article 13 (commencing with Section 25250) of Chapter 6.5 of Division 20 of the Health and Safety Code, relating to the management of used oil, as defined, which sets forth the requirements for environmentally safe recycling and disposal of used oil.

(b) It is the intent of the Legislature to now establish a program to increase both the supply and demand for recycled oil products in a manner consistent with the definitions and requirements of that article.

(c) The growth of the market for recycled oil products further serves the state's interests in the preservation of the state's and the nation's dwindling supply of petroleum.

SEC. 2. The Legislature further finds and declares as follows:

(a) New technologies currently employed by the recycled oil industry are capable of yielding high quality oils equivalent or superior to virgin oils.

(b) The industrial capability currently exists to readily meet an increase in demand for recycled oil products.

(c) The costs of recycled oil are competitive with those of virgin oil.

SEC. 3. Article 7.6 (commencing with Section 10405) is added to

Chapter 2 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 7.6. Recycled Oil Markets

10405. The following definitions govern the construction of this article:

(a) "Department" means the State Department of Health Services.

(b) "Industrial oil" means any compressor, turbine, or bearing oil, hydraulic oil, metal-working oil, or refrigeration oil.

(c) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox, or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.

(d) "Procuring agency" means any state agency or any person contracting with that agency with respect to work performed under a contract for lubricating oil or industrial oil.

(e) "Recycled oil" means recycled oil, as defined in subdivision (c) of Section 25250 1 of the Health and Safety Code.

(f) "Used oil" means used oil, as defined in subdivision (a) of Section 25250.1 of the Health and Safety Code.

(g) "Virgin oil" means oil which has been refined from crude oil and which has not been used or contaminated with impurities.

10406. Every procuring agency shall revise its procedures and specifications for the purchase of lubricating oil and industrial oil to eliminate any exclusion of recycled oils and any requirement that oils be manufactured from virgin materials.

10407. Every procuring agency shall require that purchases of lubricating oil and industrial oil be made from the seller whose oil product contains the greater percentage of recycled oil, unless the procuring agency certifies that a specific oil product containing recycled oil is any of the following:

(1) Not reasonably available within a reasonable period of time.

(2) Unable to meet the reasonable performance standards of the procuring agency, including any warranty requirement.

(3) Available only at a cost greater than the cost of available virgin oil products.

10408. (a) Every procuring agency shall establish and maintain an affirmative program for procuring oils containing the maximum content of recycled oil.

(b) An affirmative program shall include, but not be limited to, all of the following:

(1) The placement of descriptions of the preference for recycled oil products in publications used to solicit bids from suppliers.

(2) Description of the recycled oil procurement program at bidders' conferences.

(3) Discussion of the preference program in lubricating oil and industrial oil procurement solicitations or invitations to bid.

(4) Efforts to inform industry trade associations about the

preference program.

10409. Every local agency shall purchase lubricating oil and industrial oil from the seller whose oil product contains the greater percentage of recycled oil, if the availability, fitness, quality, and price of the recycled oil product is otherwise equal to, or better than, virgin oil products.

SEC. 4. Section 3464 of the Public Resources Code is repealed.

SEC. 5. Section 3468 of the Public Resources Code is repealed.

SEC. 6. Section 3470 of the Public Resources Code is amended to read:

3470. (a) All rules and regulations of the board shall be adopted, amended, and repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The board shall coordinate activities and functions with all other state agencies, including, but not limited to, the State Department of Health Services, the Department of Water Resources, and the State Water Resources Control Board, in order to avoid duplication in reporting and information gathering.

(c) The State Department of Health Services shall include a section in its report prepared pursuant to Section 25178 of the Health and Safety Code, based in part on information submitted in accordance with Article 13 (commencing with Section 25250) of Chapter 6.5 of Division 20 of the Health and Safety Code, summarizing information on used oil collection and recycling, analyzing the effectiveness of rules and regulations, and making recommendations for necessary changes in the provisions or their administration.

SEC. 7. Section 3471 is added to the Public Resources Code, to read:

3471. The manufacturer of every container that contains lubricating oils or industrial oils, and which is intended for sale to consumers in California, shall do either of the following:

(a) Label the containers in at least 7-point typeface as follows:

"Used oil is generally classified as a hazardous waste in California. Do not dispose of used oil in garbage, sewers, or the ground. To find out how to properly recycle used oil in your area, call (800) _____-_____."

The toll-free telephone number on the label shall be the number maintained by the board pursuant to Section 3472.

(b) Provide signs or other written material to retailers appropriate for informing consumers of the information that would otherwise be contained in the label set forth in paragraph (a).

SEC. 8. Section 3472 is added to the Public Resources Code, to read:

3472. The board shall maintain access to a toll-free telephone number which is to be used for the sole purpose of informing callers of the following:

(a) The permissible methods of recycling or disposing of used oil.

(b) The types of establishments likely to be properly equipped and authorized to accept used oil.

(c) Specific establishments located in the area of the caller that have notified the board that they are properly equipped and authorized to accept used oil.

(d) Specific oil recycling facilities in the area of the caller that are authorized by the State Department of Health Services to receive used oil and that have programs of used oil pickup.

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 one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 10. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the General Fund to the California Waste Management Board for the purpose of maintaining access to the oil recycling information toll-free telephone number pursuant to Section 3472 of the Public Resources Code.

SEC. 11. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the Solid Waste Management Fund to the California Waste Management Board for the purpose of maintaining access to the oil recycling information toll-free telephone number pursuant to Section 3472 of the Public Resources Code.

SEC. 12. Section 11 of this bill shall only become operative if AB 939 is also enacted and becomes effective on or before January 1, 1990, and adds Section 41701 to the Public Resources Code, in which case Section 10 of this bill shall not become operative.

CHAPTER 1227

An act to add and repeal Sections 17053, 17053.1, and 23605 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 17053 is added to the Revenue and Taxation Code, to read:

17053. (a) For taxable years beginning on or after January 1, 1989, and before January 1, 1996, there shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to the amount determined in subdivisions (b), (c), and (g).

(b) The amount of the credit allowed by this subdivision shall be as follows:

(1) In the case of an employer with 200 or more employees, the credit shall be 20 percent of the cost paid or incurred by an employer for the purchase of company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which are provided as part of an employer-sponsored ridesharing incentive program for employees conducted principally in this state.

(2) In the case of an employer with less than 200 employees, the credit shall be 30 percent of the cost specified in paragraph (1).

(3) The credit provided in this subdivision shall be claimed in the state income tax return for the taxable year in which the ridesharing vehicles are purchased and placed in service.

(4) The basis of any ridesharing vehicle purchased for which a credit is allowed shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(5) If a ridesharing vehicle purchased for which a credit is provided in this subdivision is disposed of, or is no longer used as part of an employer-sponsored ridesharing incentive program, within three years of its acquisition, that portion of the credit provided in this subdivision which represents the pro rata share of that remaining three-year period shall be added to the employer's tax liability in the taxable year of that disposition or nonuse. The basis of the vehicle shall be increased by an amount equal to that amount added to the employer's tax liability.

(c) The amount of the credit allowed by this subdivision shall be as follows:

(1) In the case of an employer with 200 or more employees, the credit shall be 20 percent of the cost paid or incurred by an employer for leasing or contracting company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which are provided as part of an employer-sponsored ridesharing incentive program for employees conducted principally in this state. This credit shall be based on the total payments to the lessor or vehicle provider during the life of the lease or contract. The lessor or vehicle provider of vehicles specified in this subdivision shall not be eligible for this credit.

(2) In the case of an employer with less than 200 employees, the credit shall be 30 percent of the cost specified in paragraph (1).

(3) The credit provided in this subdivision shall be claimed in the state income tax return for the taxable year in which the ridesharing vehicles are first leased or contracted for and placed in service. However, with respect to ridesharing vehicles first leased or

contracted for prior to the 1989 taxable year, the credit provided in this subdivision shall be claimed in the state income tax return for the 1989 taxable year based on the total payments to the lessor or vehicle provider during the 1989 taxable year and the total payments to be made during the remaining life of the lease or contract.

(4) If a ridesharing vehicle leased or contracted for which a credit is provided in this subdivision is disposed of, or is no longer used as part of an employer-sponsored ridesharing incentive program, prior to the expiration date of the lease or contract, that portion of the credit provided in this subdivision which represents the pro rata share of the remaining life of that lease or contract shall be added to the employer's tax liability in the taxable year of that disposition or nonuse.

(d) The credits allowed by subdivisions (b) and (c) shall not apply to the cost of purchasing, leasing, or contracting company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which would otherwise be required as part of the employer's business activities in the absence of an employer-sponsored ridesharing incentive program.

(e) With the exception of a husband and wife, if two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to a partner's distributive share. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(f) The employer shall do all of the following with respect to the credits allowed in subdivisions (b) and (c):

(1) Keep a contemporaneous log of the vehicle's use in order that it can be determined that it meets the requirements specified in subdivision (i). The log information shall include, but not be limited to, dates and times the vehicle was driven, the mileage for each trip, and the purpose of the trip.

(2) Retain vehicle documents verifying the vehicle's weight requirements, if applicable, and fuel efficiency standards as specified in subdivision (i). These documents shall include, but not be limited to, the vehicle's owners manual and the vehicle's registration.

(3) Provide upon the request of the Franchise Tax Board the information specified in paragraphs (1) and (2).

(g) A credit shall be allowed by this subdivision for the cost paid or incurred by employers for providing subsidized public transit passes to employees as follows:

(1) Forty percent of the cost if the employers provide no free or subsidized parking.

(2) Twenty percent of the cost if the employers provide

subsidized parking.

(3) Ten percent of the cost if the employers provide free parking.

(h) In the case where the credit allowed by this section exceeds the "net tax" the excess may be carried over to reduce the "net tax" in the following years and succeeding years if necessary, until the credit has been exhausted.

(i) For purposes of this section:

(1) "Employer" means a taxpayer for whom services are performed by employees, except government agencies.

(2) "Employee" means an individual who performs service for an employer for more than 10 hours per week for remuneration.

(3) "Employer-sponsored ridesharing incentive program" means a program undertaken by an employer either alone or in cooperation with other employers to encourage or provide, or both, fiscal or other incentives to employees to make the home-to-work commute trip by any mode other than the single-occupant motor vehicle.

(4) "Company shuttle bus" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 80 percent of the mileage of which reasonably can be expected to be for any of the following purposes·

(i) Transporting employees on a scheduled-route basis.

(ii) Interfacing with public transportation facilities.

(iii) Transporting employees on a demand-response basis.

(C) Is acquired by the taxpayer on or after the date of the enactment of this section, except as provided in paragraph (3) of subdivision (c).

(D) With respect to which the taxpayer makes an election under this paragraph on his or her return for the taxable year in which the vehicle is placed in service.

(E) Is made available to all employees on a nondiscriminatory basis in the normal course of the taxpayer's business.

(5) "Company commuter bus or van" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this legislation, except as provided in paragraph (3) of subdivision (c).

(D) With respect to which the taxpayer makes an election under this paragraph on his or her return for the taxable year in which the vehicle is placed in service.

(E) Is made available to all employees on a nondiscriminatory basis in the normal course of the taxpayer's business.

(6) "Company motor pool vehicle" means a highway vehicle

which meets all of the following criteria:

(A) Is an automobile with a gross vehicle weight of 6,000 pounds or less.

(B) Meets or exceeds certain fuel efficiency standards pursuant to the provisions of Title II of Public Law 95-618.

(C) Is made available to all employees on a nondiscriminatory basis during the course of the taxpayer's business, and at least 50 percent of its mileage during the taxable year can reasonably be expected to be used for the purpose of providing transportation to employees.

(D) Is acquired by the taxpayer on or after the date of the enactment of this section, except as provided in paragraph (3) of subdivision (c).

(E) With respect to which the taxpayer makes an election under this paragraph on his or her return for the taxable year in which the vehicle is placed in service.

(7) "Subsidized parking" means any parking provided to employees at the worksite of the employee receiving the transit pass that is not charged at its fair market value, represented by the prevailing price charged for similar parking within a half-mile radius of the worksite, as certified by the employer.

(j) The credits provided in this section shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled for costs to which the credit applies.

(k) This section shall remain in effect only until December 1, 1996, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit has been exhausted.

SEC. 2. Section 17053.1 is added to the Revenue and Taxation Code, to read:

17053.1. (a) For taxable years beginning on or after January 1, 1989, and before January 1, 1996, there shall be allowed as a credit against the amount of "net tax" (as defined in Section 17039) an amount equal to the amount determined in subdivision (b).

(b) Employees in non-employer-sponsored vanpool programs shall be allowed a credit in an amount equal to 40 percent of all vanpool subscription costs, for which receipts are available. The credit allowed by this subdivision shall not exceed four hundred eighty dollars ($480) per taxable year.

(c) For purposes of this section:

(1) "Employer" means any individual for whom or entity for which services are performed by employees.

(2) "Employee" means an individual who performs service for an employer for at least 10 hours per week for remuneration, and who vanpools to and from work at least three days a week or 15 days per month for at least six months of the year.

(3) "Non-employer-sponsored vanpool program" means a program under which vehicles and related equipment and services are made available for use by employers and employees for purposes

of commuting to and from work and which is administered and operated by an individual or organization, including a governmental agency, for the commuting purposes of other employers and employees who are not employees of that individual or organization.

(4) "Vanpool" means a vehicle with a seating arrangement designed to carry 7 to 15 adults, including the driver, and in which an average of seven or more persons commute on a daily basis to and from work.

(d) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been used.

(e) With the exception of a husband and wife, if two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to partner's distributive share. In the case of a husband or wife who files a separate return, the credit *may be taken by either or equally divided between them.*

(f) This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 3. Section 23605 is added to the Revenue and Taxation Code, to read:

23605. (a) For income years beginning on or after January 1, 1989, and before January 1, 1996, there shall be allowed as a credit against the amount of "tax" (as defined in Section 23036) an amount equal to the amount determined in subdivisions (b) and (c).

(b) The amount of the credit allowed by this subdivision shall be as follows:

(1) In the case of an employer with 200 or more employees, the credit shall be 20 percent of the cost paid or incurred by an employer for the purchase of company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which are provided as part of an employer-sponsored ridesharing incentive program for employees conducted principally in this state.

(2) In the case of an employer with less than 200 employees, the credit shall be 30 percent of the cost specified in paragraph (1).

(3) The credit provided in this subdivision shall be claimed in the state return for the income year in which the ridesharing vehicles are purchased and placed in service

(4) The basis of any ridesharing vehicle purchased for which a credit is allowed shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(5) If a ridesharing vehicle purchased for which a credit is

provided in this subdivision is disposed of, or is no longer used as part of an employer-sponsored ridesharing incentive program, within three years of its acquisition, that portion of the credit provided in this subdivision which represents the pro rata share of that remaining three-year period shall be added to the employer's tax liability in the income year of that disposition or nonuse. The basis of the vehicle shall be increased by an amount equal to that amount added to the employer's tax liability.

(c) The amount of the credit allowed by this subdivision shall be as follows:

(1) In the case of an employer with 200 or more employees, the credit shall be 15 percent of the cost paid or incurred by an employer for leasing or contracting company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which are provided as part of an employer-sponsored ridesharing incentive program. This credit shall be based on the total payments to the lessor or vehicle provider during the life of the lease or contract. The lessor or vehicle provider of vehicles specified in this subdivision is not eligible for this credit.

(2) In the case of an employer with less than 200 employees, the credit shall be 30 percent of the cost specified in paragraph (1).

(3) The credit provided in this subdivision shall be claimed in the state income tax return for the income year in which the ridesharing vehicles are leased or contracted for and placed in service. However, with respect to ridesharing vehicles first leased or contracted for prior to the 1989 income year, the credit provided in this subdivision shall be claimed in the state income tax return for the 1989 income year based on the total payments to the lessor or vehicle provider during the 1989 income year and the total payments to be made during the remaining life of the lease or contract.

(4) If a ridesharing vehicle leased or contracted for which a credit is provided in this subdivision is disposed of, or is no longer used as part of an employer-sponsored ridesharing incentive program, prior to the expiration date of the lease or contract, that portion of the credit provided in this subdivision which represents the pro rata share of the remaining life of that lease or contract shall be added to the employer's tax liability in the income year of that disposition or nonuse.

(d) The credits allowed by subdivisions (b) and (c) shall not apply to the cost of purchasing, leasing, or contracting company shuttle buses, company commuter buses or vans, or company motor-pool vehicles which would otherwise be required as part of the employer's business activities in the absence of an employer-sponsored ridesharing incentive program.

(e) If two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written

partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to a partner's distributive share.

(f) The employer shall do all of the following with respect to the credits allowed in subdivisions (b) and (c):

(1) Keep a contemporaneous log of the vehicle's use such that it can be determined that it meets the requirements specified in subdivision (i). The log information shall include, but not be limited to, dates and times the vehicle was driven, the mileage for each trip, and the purpose of the trip.

(2) Retain vehicle documents verifying the vehicle's weight requirements, if applicable, and fuel efficiency standards as specifed in subdivision (i). These documents shall include, but not be limited to, the vehicle's owners manual and the vehicle's registration.

(3) Provide upon the request of the Franchise Tax Board the information specified in paragraphs (1) and (2).

(g) A credit shall be allowed by this subdivision for the cost paid or incurred by employers for providing subsidized public transit passes to employees as follows:

(1) Forty percent of the cost if the employers provide no free or subsidized parking.

(2) Twenty percent of the cost if the employers provide subsidized parking.

(3) Ten percent of the cost if the employers provide free parking.

(h) In the case where the credit allowed by this section exceeds the "tax" the excess may be carried over to reduce the "tax" in the following years and succeeding years if necessary, until the credit has been exhausted.

(i) For purposes of this section:

(1) "Employer" means a taxpayer for whom services are performed by employees, except government agencies.

(2) "Employee" means an individual who performs service for an employer for more than 10 hours per week for remuneration.

(3) "Employer-sponsored ridesharing incentive program" means a program undertaken by an employer either alone or in cooperation with other employers to encourage or provide, or both, fiscal or other incentives to employees to make the home-to-work commute trip by any mode other than the single-occupant motor vehicle.

(4) "Company shuttle bus" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 80 percent of the mileage of which reasonably can be expected to be for any of the following purposes:

(i) Transporting employees on a scheduled-route basis.

(ii) Interfacing with public transportation facilities.

(iii) Transporting employees on a demand-response basis.

(C) Is acquired by the taxpayer on or after the date of the

enactment of this section, except as provided in paragraph (3) of subdivision (c).

(D) With respect to which the taxpayer makes an election under this paragraph on its return for the income year in which the vehicle is placed in service.

(E) Is made available to all employees on a nondiscriminatory basis in the normal course of the taxpayer's business.

(5) "Company commuter bus or van" means a highway vehicle which meets all of the following criteria:

(A) Has a seating capacity of at least seven adults, including the driver.

(B) At least 50 percent of the mileage of which can be reasonably expected to be used for the purpose of transporting employees to and from work.

(C) Is acquired by the taxpayer on or after the date of enactment of this section, except as provided in paragraph (3) of subdivision (c).

(D) With respect to which the taxpayer makes an election under this paragraph on its return for the income year in which the vehicle is placed in service.

(E) Is made available to all employees on a nondiscriminatory basis in the normal course of the taxpayer's business.

(6) "Company motor-pool vehicle" means a highway vehicle which meets all of the following criteria:

(A) Is an automobile with a gross vehicle weight of 6,000 pounds or less.

(B) Meets or exceeds certain fuel efficiency standards pursuant to the provisions of Title II of Public Law 95-618.

(C) Is made available to all employees on a nondiscriminatory basis during the course of the taxpayer's business, and at least 50 percent of its mileage during the taxable year can reasonably be expected to be used for the purpose of providing transportation to employees.

(D) Is acquired by the taxpayer on or after the date of the enactment of this section, except as provided in paragraph (3) of subdivision (c).

(E) With respect to which the taxpayer makes an election under this paragraph on its return for the income year in which the vehicle is placed in service.

(7) "Subsidized parking" means any parking provided to employees at the worksite of the employee receiving the transit pass that is not charged at its fair market value, represented by the prevailing price charged for similar parking within a half-mile radius of the worksite, as certified by the employer.

(j) The credit provided in this section shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled for costs to which the credit applies.

(k) This section shall remain in effect only until December 1, 1996, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until

the credit has been exhausted.

SEC. 4. The Legislative Analyst shall evaluate the programs enacted by this act and report the same to the Legislature before January 1, 1995.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1228

An act to amend Section 99317 of the Public Utilities Code, relating to transportation, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 99317 of the Public Utilities Code, as amended by Chapter 105 of the Statutes of 1989, is amended to read:

99317. (a) Funds made available pursuant to subdivision (b) 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) Railroad rights-of-way acquisition.

(2) Exclusive public mass transit guideways and rolling stock.

(3) Intermodal transfer stations serving various transportation modes.

(4) Passenger ferries and terminals.

(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.

(c) The amount of funds allocated for a transit capital improvement project pursuant to this section shall not exceed 50 percent of the amount of the nonfederal share of project cost. This requirement shall not apply to projects for intercity rail as defined in Section 164.55 of the Streets and Highways Code.

SEC. 2. It is the intent of the Legislature, in enacting this act, to restore funding to the state's mass transportation and local assistance programs consistent with the new allocation formula reflected in Section 99312 of the Public Utilities Code, as amended in the historic transportation compromise enacted by Chapter 105 of the Statutes of 1989.

SEC. 3. (a) The sum of five million five hundred eighty-nine thousand seven hundred fifty dollars ($5,589,750) is appropriated from the Transportation Planning and Development Account in the State Transportation Fund for allocation as follows:

(1) Two million seven hundred ninety-four thousand eight

hundred seventy-five dollars ($2,794,875) to the Controller for purposes of Section 99313 of the Public Utilities Code.

(2) Two million seven hundred ninety-four thousand eight hundred seventy-five dollars ($2,794,875) to the Controller for purposes of subdivision (b) of Section 99314 of the Public Utilities Code.

SEC. 4. Sections 2 and 3 of this act shall not become operative unless Senate Bill No. 1391 of the 1989–90 Regular Session is enacted and takes effect on or before January 1, 1990.

CHAPTER 1229

An act to amend Sections 16850, 16851, and 16852 of the Government Code, to amend Sections 10108.5, 10115.1, and 10115.2 of, and to add Sections 10115.7 and 10115.8 to, the Public Contract Code, relating to state contracts.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. It is the purpose of this act to clarify the intent of the Legislature in enacting Chapter 61 of the Statutes of 1988.

SEC. 2. Section 16850 of the Government Code is amended to read:

16850. (a) Notwithstanding any other provision of law, each awarding department shall have annual statewide participation goals of not less than 15 percent for minority business enterprises and 5 percent for women business enterprises for contracts entered into by the awarding department during the year for each of the professional bond services. This section shall not apply if a contract for professional bond services of an underwriter is to be obtained by competitive bid. However, each awarding department shall establish goals for contracts to be obtained by competitive bid for professional bond services, as defined in Section 16851.

These goals shall apply to the overall dollar amount expended by the awarding department with respect to the contracts for professional bond services relating to the issuance of bonds by the awarding department including amounts spent as underwriter's discounts.

(b) In attempting to meet the goals set forth in subdivision (a), the awarding department shall consider establishing cocounsel, joint venture, and subcontracting relationships including minority business enterprises and women business enterprises in all contracts for bonds awarded by the awarding department. However, nothing in this article shall preclude the awarding department from achieving the goals set forth in this section without requiring joint

ventures, cocounsel, or subcontracting arrangements.

(c) This section shall not limit the ability of any awarding department to meet a goal higher than those set forth in subdivision (a) for participation by minority and women business enterprises in contracts awarded by the awarding department.

(d) Nothing in this chapter shall be construed to authorize any awarding department to discriminate in the awarding of any contract on the basis of race, color, sex, ethnic origin, or ancestry.

SEC. 3. Section 16851 of the Government Code is amended to read:

16851. As used in this chapter, the following definitions apply:

(a) "Awarding department" means any agency, department, constitutional officer, governmental entity, or other officer or entity of the state empowered by law to issue bonds on behalf of the State of California.

(b) "Bonds" means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by or on behalf of the State of California.

(c) "Contract" includes any contract, agreement, or joint agreement to provide professional bond services to the State of California or an awarding department.

(d) "Contractor" means any provider of professional bond services who enters into a contract with an awarding department.

(e) "Goal" means a numerically expressed objective that awarding departments and providers of professional bond services are required to make efforts to achieve.

(f) "Minority" means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese, Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics.

(g) "Minority business enterprise" means a business concern that meets all of the following requirements:

(1) A sole proprietorship owned by a minority or a firm or partnership, 51 percent of the stock or partnership interests of which are owned by one or more minorities.

(2) Managed by, and the daily business operations are controlled by, one or more minorities.

(3) A sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(h) "Professional bond services" include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter's counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

(i) "Women business enterprise" means a business concern that is all of the following:

(1) A sole proprietorship owned by a woman or is a firm or partnership, 51 percent of the stock or partnership interests of which are owned by one or more women.

(2) Managed by, and the daily business operations are controlled by, one or more women.

(3) A sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(j) "Minority business enterprise" and "women business enterprise," include an enterprise of which 50 percent is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women, or, in the case of a publicly owned business, 50 percent of the stock of which is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women. Any business enterprise so defined may be counted as either a minority business enterprise or a women business enterprise for purposes of meeting the participation goals, but no one such business enterprise shall be counted as meeting the participation goals in both categories.

SEC. 4. Section 16852 of the Government Code is amended to read:

16852. Notwithstanding Section 16850, if a contract for professional bond services of an underwriter is to be obtained by competitive bid, the awarding department shall, at a minimum, take all of the following actions:

(a) Deliver the notice of sale or other notification of intention to the issue the bonds to all minority and women business enterprises that have listed their names with the awarding department for the purpose of this notice and other qualified minority and women business enterprises known to the awarding department.

(b) State in all notices of sale and other notifications of intention to issue bonds that minority and women business enterprises are encouraged to respond.

(c) Require all submitting bidders to certify their awareness of the goals of the awarding department in accordance with this chapter.

(d) Nothing in this section shall be construed to authorize any awarding department to discriminate in the solicitation of bids or in the awarding of contracts on the basis of race, color, sex, ethnic origin, or ancestry.

SEC. 5. Section 10108.5 of the Public Contract Code is amended to read:

10108.5. (a) Contracts let by the Department of Corrections for the construction, erection, alteration, repair, or improvement of state prison facilities shall have as statewide participation goals 15 percent minority business enterprise and 5 percent women business enterprise exclusive of inmate day labor contracts. These goals shall apply to the overall dollar amount expended each year by the department for these purposes.

The term "minority business enterprise" means a business concern (1) that is at least 51 percent owned by one or more minorities or, in the case of a publicly owned business, at least 51 percent of the

stock of which is owned by one or more minorities; and (2) whose management and daily business operations are controlled by one or more such individuals.

The term "women business enterprise" means a business concern (1) that is at least 51 percent owned by a woman or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (2) whose management and daily business operations are controlled by one or more such individuals.

"Minority business enterprise" and "women business enterprise" include an enterprise of which 50 percent is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women or, in the case of a publicly owned business, 50 percent of the stock of which is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women or, in the case of a publicly owned business, 50 percent of the stock of which is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women. Any business enterprise so defined may be counted as either a minority business enterprise or a women business enterprise for purposes of meeting the participation goals, but no one such business enterprise shall be counted as meeting the participation goals in both categories.

The term "goal" means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

Notwithstanding any other provision of this subdivision, the department may, at its discretion, exempt from the statewide participation goals of this subdivision, and exempt from subdivision (b), contracts for a dollar amount of ten thousand dollars ($10,000) or less.

(b) (1) In awarding contracts to the lowest responsible bidder, the department shall consider the efforts of a bidder to meet minority business enterprise and women business enterprise goals set forth in subdivision (a). The department shall award the contract to the lowest responsible bidder meeting or making good faith efforts to meet these goals.

(2) A bidder shall be deemed to have made good faith efforts upon submittal, within time limits specified by the department, of documentary evidence that all of the following actions were taken:

(A) Contact was made with the department to identify minority and women business enterprises.

(B) Contact was made with other state and federal agencies, and with local minority and women business enterprise organizations to identify minority and women business enterprises.

(C) Advertising was published in trade papers and papers focusing on minority and women business enterprises, unless time limits imposed by the department do not permit that advertising.

(D) Invitations to bid were submitted to potential minority and

women business enterprise contractors.

(E) Available minority and women business enterprises were considered.

(3) (A) Nothing in this article shall be construed to authorize the department to discriminate in the awarding of any contract on the basis of race, color, sex, ethnic origin, or ancestry.

(B) Nothing in this article shall be construed to authorize any contractor to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin, or ancestry.

(c) The department shall establish a method of monitoring adherence to the goals specified in subdivision (a).

(d) The department shall adopt rules and regulations for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted without review and approval by the Office of Administrative Law if adopted within 90 days of the effective date of this act.

(e) Beginning July 1, 1986, and on July 1 of each year thereafter, the department shall report to the Governor and the Legislature on the level of participation by minority and women business enterprises in contracts as identified in subdivision (a). If the established goals are not being met, the department shall report the reasons for its inability to achieve the standards and identify remedial steps it shall take.

(f) In implementing this section, the department shall utilize existing resources such as the Office of Small and Minority Business, the Minority Business Development Agency, and the Small Business Administration.

(g) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 6. Section 10115.1 of the Public Contract Code is amended to read:

10115.1 As used in this article, the following definitions apply:

(a) "Awarding department" means any state agency, department, governmental entity, or other officer or entity empowered by law to enter into contracts on behalf of the State of California.

(b) "Contract" includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the State of California.

(c) "Contractor" means any person or persons, regardless of race, color, sex, ethnic origin or ancestry, or any firm, partnership, corporation, or combination thereof, whether or not a minority or women business enterprise, who submits a bid and enters into a

contract with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California.

(d) "Minority" means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese, Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics.

(e) "Minority business enterprise" means a business concern that is all of the following:

(1) At least 51 percent owned by one or more minorities, or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities.

(2) Managed by, and the daily business operations are controlled by, one or more minorities.

(3) A domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(f) "Women business enterprise" means a business concern that is all of the following:

(1) At least 51 percent owned by a woman or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women.

(2) Managed by, and the daily business operations are controlled by, one or more women.

(3) A domestic corporation with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(g) "Minority business enterprise" and "women business enterprise," include an enterprise of which 50 percent is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women or, in the case of a publicly owned business, 50 percent of the stock of which is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women. Any business enterprise so defined may be counted as either a minority business enterprise or a women business enterprise for purposes of meeting the participation goals, but no one such business enterprise shall be counted as meeting the participation goals in both categories.

(h) "Goal" means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

SEC 7 Section 10115 2 of the Public Contract Code is amended to read.

10115 2 (a) In awarding contracts to the lowest responsible bidder, the awarding department shall consider the efforts of a bidder to meet minority business enterprise and women business enterprise goals set forth in this article. The awarding department shall award the contract to the lowest responsible bidder meeting or making good faith efforts to meet these goals.

(b) A bidder shall be deemed to have made good faith efforts upon submittal, within time limits specified by the awarding department, of documentary evidence that all of the following actions were taken:

(1) Contact was made with the awarding department to identify minority and women business enterprises

(2) Contact was made with other state and federal agencies, and with local minority and women business enterprise organizations to identify minority and women business enterprises.

(3) Advertising was published in trade papers and papers focusing on minority and women business enterprises, unless time limits imposed by the awarding department do not permit that advertising.

(4) Invitations to bid were submitted to potential minority and women business enterprise contractors.

(5) Available minority and women business enterprises were considered.

(c) The awarding department may, at its discretion, exempt from the statewide participation goals set forth in Section 10115, and exempt from this section, contracts for a dollar amount of ten thousand dollars ($10,000) or less.

SEC. 8. Section 10115.7 is added to the Public Contract Code, to read:

10115.7. (a) Nothing in this article shall be construed to authorize any awarding department to discriminate in the awarding of any contract on the basis of race, color, sex, ethnic origin, or ancestry.

(b) Nothing in this article shall be construed to authorize any contractor to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin, or ancestry.

SEC. 9. Section 10115.8 is added to the Public Contract Code, to read:

10115.8 If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

CHAPTER 1230

An act to amend Section 93 of the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 93 of the Revenue and Taxation Code is amended to read:

93. (a) Notwithstanding any other provision of law, except as provided in subdivisions (b) and (c), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 (commencing with Section 15000) of Division 1 and Sections 39308, 39311, 81338, and 81341 of the Education Code. In determining the tax rate required for the purposes specified in this subdivision, the amount of the levy shall be increased to compensate for any allocation and payment of tax revenues required pursuant to subdivision (b) of Section 33670 and subdivision (d) of Section 33675 of the Health and Safety Code.

(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value, and at an equivalent rate when the ratio prescribed in Section 401 is changed from 25 percent to 100 percent. The revenue from that tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of the Government Code through the 1978–79 fiscal year and in accordance with applicable provisions of the Revenue and Taxation Code in each fiscal year thereafter. Revenues from property tax delinquency penalties, and accrued legal interest paid on judgments for the recovery of unpaid property taxes rendered by courts of this state, shall be distributed pursuant to Sections 4653.6, 4655.4, and 4658.4 of the Revenue and Taxation Code, or their successors.

(c) Any jurisdiction may levy an ad valorem property tax rate in the excess of the rate permitted in subdivision (b) in order to produce revenues in an amount which is equal to the amount needed to make annual payments for the interest and principal on any bonded indebtedness for the acquisition or improvement of real property which is approved by a two-thirds vote of its voters after June 4, 1986.

SEC. 2. The Legislature finds and declares that property tax delinquency penalties, and accrued legal interest paid on judgments for the recovery of unpaid property taxes rendered by courts of this state, are separate and distinct from property tax revenues, and that it is the intent of the Legislature in enacting this act to nullify the holding of the court in City of Los Angeles v. County of Los Angeles, (1983) 139 Cal. App. 3d 999.

SEC. 3. Notwithstanding the amendments to Section 93 of the Revenue and Taxation Code made by this act, the allocation of funds pursuant to subdivision (b) of Section 93 of the Revenue and Taxation Code in fiscal years 1978–79 to 1988–89, inclusive, and in fiscal year 1989–90 to December 31, 1989, inclusive, shall be deemed correct, and no reductions or increases in those allocations shall be required by reason of this act.

SEC. 4. 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 the revenues provided to counties by this act exceed any additional costs which might be incurred by counties as a result of this act Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1231

An act to repeal Section 58592 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 58592 of the Food and Agricultural Code is repealed.

CHAPTER 1232

An act to amend Section 99317 of, and to add Section 180250.5 to, the Public Utilities Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989.]

I am deleting the $5,589,750 appropriation for rail operations contained in Section 3. (a) (2) of Senate Bill No 1391

This bill would allow passenger ferries and terminals to be eligible for funding from the transit capital improvement program and would make an appropriation from the Transportation Planning and Development account for transit capital projects and operations

This appropriation is contained in Assembly Bill No 1640 I am taking this action at the request of the author so that the intent of both bills can be implemented.

With this appropriation, I approve Senate Bill No 1391.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 99317 of the Public Utilities Code, as amended by Chapter 105 of the Statutes of 1989, is amended to read:

99317. (a) Funds made available pursuant to subdivision (b) of Section 99315 shall be appropriated to the department for allocation, as directed by the commission, to fund the following types of transit and intercity rail capital improvement projects:

(1) Railroad rights-of-way acquisition

(2) Exclusive public mass transit guideways and rolling stock.

(3) Intermodal transfer stations serving various transportation modes.

(4) Passenger ferries and terminals.

(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.

(c) Funds made available for capital outlay pursuant to subdivision (a) of Section 14031.6 of the Government Code and subdivision (a) of Section 99315 shall be appropriated to the department for allocation, as directed by the commission, solely for capital outlay improvements and rolling stock on intercity rail passenger routes.

(d) The amount of funds allocated for a transit capital improvement project, except an intercity rail transit capital improvement project, pursuant to this section shall not exceed 50 percent of the amount of the nonfederal share of project cost. This requirement shall not apply to projects for intercity rail as defined in Section 164.55 of the Streets and Highways Code.

SEC. 2. Section 180250.5 is added to the Public Utilities Code, to read:

180250 5. Notwithstanding any other provision of law, if the

imposition of a retail transactions and use tax, together with the establishment of an appropriations limit of seven hundred sixty-five million dollars ($765,000,000), was approved by the voters of a county pursuant to Section 180250 on November 8, 1988, and if the ordinance adopted by the authority which requested the board of supervisors to submit the proposition for approval of that tax and appropriations limit by the voters authorized the issuance of bonds payable from that tax, that authority may issue bonds, refunding bonds, or bond anticipation notes pursuant to this chapter.

SEC. 3. (a) The sum of eleven million one hundred seventy-nine thousand five hundred dollars ($11,179,500) is hereby appropriated from the Transportation Planning and Development Account in the State Transportation Fund for allocation as follows:

(1) The sum of five million five hundred eighty-nine thousand seven hundred fifty dollars ($5,589,750) to the Department of Transportation for allocation, as directed by the California Transportation Commission, to the transit capital improvement projects specified in Section 99317 of the Public Utilities Code, according to the commission's regular statewide priority programming process

(2) The sum of five million five hundred eighty-nine thousand seven hundred fifty dollars ($5,589,750) to the Controller for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of subdivisions (b) and (c) of Section 99312 of the Public Utilities Code. One-half of this amount shall be allocated according to subdivision (b) of Section 99312 and one-half according to subdivision (c) of Section 99312.

(b) The amount of matching funds required for a transit capital improvement project shall be as specified in subdivision (c) of Section 99317 of the Public Utilities Code.

(c) It is the intent of the Legislature that the funds appropriated by subdivision (a) be programmed for expenditure within the commission's 1990–91 fiscal year transit capital improvement program to be adopted by April 1, 1990, and that these funds be allocated by the commission in April of 1990 to ready projects on the adopted 1990–91 fiscal year transit capital improvement program priority list

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement as quickly as possible greatly needed rail improvements and to authorize a local transportation authority for which the imposition of a retail transactions and use tax has been approved by the voters to issue bonds, it is necessary that this act take effect immediately.

CHAPTER 1233

An act to add Chapter 8.8 (commencing with Section 8740) to Division 1 of Title 2 of the Government Code, relating to museums, and making an appropriation therefor.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

I am deleting the $500,000 appropriation contained in Section 3 of Assembly Bill No. 241.

This bill would appropriate $500,000 to the Controller for allocation as a grant to the Board of Trustees of the California Museum of Latino History, Art, and Culture, for the development of preliminary plans for this museum and for administrative costs of the board of trustees

I will be signing AB 1580, which appropriates $300,000 for the California Museum of Latino History. Thus, the appropriation in this bill is duplicative and unnecessary as the provisions of this bill are funded by the enactment of AB 1580

With this deletion, I approve Assembly Bill No 241.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Chapter 8.8 (commencing with Section 8740) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 8.8. CALIFORNIA MUSEUM OF LATINO HISTORY, ART, AND CULTURE

8740. The Legislature finds and declares as follows:

(a) That Latino Americans have made major contributions to the social, cultural, and economic greatness of California.

(b) That the California Museum of Latino History, Art, and Culture, a nonprofit corporation, and the exhibits contained therein, shall serve a statewide purpose by informing and educating the public as to the contributions of Latino Americans and by enhancing cultural understanding and appreciation.

8741. The Board of Trustees for the California Museum of Latino History, Art, and Culture shall, on or before January 1, 1991, and annually thereafter, report to the Legislature on the status of the museum project and the use of state funds appropriated and allocated for the establishment of the museum, until the funds are fully expended.

8742. State moneys, from whichever fund appropriated, may be used only for developing preliminary plans and working drawings, construction, and initial equipment, including equipment for exhibits. State financial assistance shall not exceed one-half of the total cost of the project, exclusive of any costs of land acquisition and the costs of the design, construction, and installation of exhibits and the provision of interpretive services.

8743. The state shall have no liability arising from the project and its operation, and shall have no operational or maintenance responsibility for the project. The grantee shall guarantee

performance in carrying out the project as "performance" is defined by the Legislature and as represented to the granting state agency. The grantee shall maintain adequate insurance to recover the state's investment in the event of loss.

SEC. 3. The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the Special Account for Capital Outlay in the General Fund to the Controller for allocation as a grant to the Board of Trustees of the California Museum of Latino History, Art, and Culture, for purposes of developing preliminary plans for the establishment of the California Museum of Latino History, Art, and Culture, and for meeting the administrative costs of the Board of Trustees.

CHAPTER 1234

An act relating to domestic violence.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1 The Legislature finds and declares that a critical number of domestic violence victims who appear in the courts of this state are of minority descent, speak only limited English, or both. The Legislature further finds and declares that these domestic violence victims are often unwilling to provide testimony for the prosecution of these offenses due to fear of retaliation, low self-esteem and a belief that the battery was caused by the victim's behavior, and a misunderstanding of the criminal justice system.

SEC. 2. It is, therefore, the intent of the Legislature to authorize an educational program on domestic violence involving persons of Asian and Hispanic descent. Subject to the availability of funding, the Office of Criminal Justice Planning shall provide a one-time-only grant of seventy-five thousand dollars ($75,000) pursuant to this act for the purpose of developing videos addressing the problems identified in Section 1 of this act. Two videos shall be made, with one addressing the needs of Asian victims and one addressing the needs of Spanish-speaking victims. The videos shall include an explanation of the American criminal justice system and specific court proceedings likely to be applicable in domestic violence situations. After the two videos are developed, the grantee shall deliver the videos to the Office of Criminal Justice Planning. The Office of Criminal Justice Planning shall make copies of the videos available for use and shall, within the limits of available funding, make copies of the videos available for statewide distribution. The Office of Criminal Justice Planning shall award the grant pursuant to this section on the basis of proposals received in response to a request for

proposals developed by it. In addition to the grant provided by the Office of Criminal Justice Planning, the grantee shall provide a 20 percent match of the grant amount in order to receive funding pursuant to this act, which match may be in cash, the value of in-kind services, or a combination thereof. Any additional expenses incurred in the process of developing the two videos shall be paid through local, private and public donations or in-kind services. It is the intent of the Legislature that state funding for the grant shall be included in the operating budget of the Office of Criminal Justice Planning in the annual Budget Act.

CHAPTER 1235

An act to add Article 2.2 (commencing with Section 9027) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of, and to repeal Sections 9027, 9028, 9029, 9031, 9032, 9926, 9927, 9928, 9929, and 9929.5 of, the Government Code, relating to legislative open meetings.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. Section 9027 of the Government Code is repealed.

SEC. 2. Article 2.2 (commencing with Section 9027) is added to Chapter 1.5 of Part 1 of Division 2 of the Title 2 of the Government Code, to read:

Article 2.2. Open Meetings

9027. Except as otherwise provided in this article, all meetings of a house of the Legislature or a committee thereof shall be open and public, and all persons shall be permitted to attend the meetings. As used in this article, "meeting" means a gathering of a quorum of the members of a house or committee in one place for the purpose of discussing legislative or other official matters within the jurisdiction of the house or committee. As used in this article, "committee" includes a standing committee, joint committee, conference committee, subcommittee, select committee, special committee, research committee, or any similar body.

9028. Any meeting that is required to be open and public pursuant to this article, including any closed session held pursuant to subdivision (a) of Section 9029, shall be held only after full and timely notice to the public as provided by the Joint Rules of the Assembly and Senate.

9029. (a) A house of the Legislature or a committee thereof may hold a closed session solely for any of the following purposes:

(1) To consider the appointment, employment, evaluation of

performance, or dismissal of a public officer or employee, to consider or hear complaints or charges brought against a Member of the Legislature or other public officer or employee, or to establish the classification or compensation of an employee of the Legislature.

(2) To consider matters affecting the safety and security of Members of the Legislature or its employees or the safety and security of any buildings and grounds used by the Legislature.

(3) To confer with, or receive advice from, its legal counsel regarding pending or reasonably anticipated, or whether to initiate, litigation when discussion in open session would not protect the interests of the house or committee regarding the litigation.

(b) A caucus of the Members of the Senate, the Members of the Assembly, or the Members of both houses, which is composed of members of the same political party, may meet in closed session.

9029.5. (a) A closed session may be held pursuant to paragraph (3) of subdivision (a) of Section 9029 under any of the following circumstances:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which a house of the Legislature or a committee, Member, or employee thereof is a party, has been initiated formally

(2) Based on existing facts and circumstances, a point has been reached where, in the opinion of a house of the Legislature or a committee thereof, on the advice of its legal counsel, litigation against the house or a committee, Member, or employee thereof is reasonably anticipated.

(3) Based on existing facts and circumstances, a house of the Legislature or a committee thereof has decided to initiate or is deciding whether to initiate litigation.

(4) To confer with, or receive advice from, its legal counsel and negotiator prior to the purchase, sale, exchange, or lease of real property by or for the house or committee regarding the price and terms of payment for the purchase, sale, exchange, or lease

(b) Prior to holding a closed session pursuant to paragraph (3) of subdivision (a) Section 9029 and this section, the presiding officer of the house or the chair of the committee shall state publicly which paragraph of subdivision (a) is applicable. If the closed session is held pursuant to paragraph (1) of subdivision (a), the presiding officer or chair shall state the title of or otherwise specifically identify the litigation to be discussed, unless the presiding officer or chair states that to do so would jeopardize the ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize the ability of the house or the committee to conclude existing settlement negotiations to its advantage. If the closed session is held pursuant to paragraph (4) of subdivision (a), the notice of the closed session shall identify the real property which the negotiations may concern and the person with whom the negotiations may take place.

(c) The legal counsel of the house or the committee shall prepare

and submit to the house or the committee a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is held pursuant to paragraph (1) of subdivision (a), the memorandum shall include the title of or other identification of the litigation. If the closed session is held pursuant to paragraph (2) or (3) of subdivision (a), the memorandum shall set forth the existing facts and circumstances on which the closed session is based. The legal counsel shall submit the memorandum to the house or the committee prior to the closed session, if feasible, or, in any case, not later than one week after the closed session. The memorandum shall be exempt from disclosure under the Legislative Open Records Act (Article 3.5 (commencing with Section 9070) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) For purposes of paragraph (3) of subdivision (a) of Section 9029 and this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator

(e) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for the purposes of conducting closed-session meetings pursuant to this article

(f) Disclosure of a memorandum required under this section shall not be deemed a waiver of the lawyer-client privilege provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

9031. Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article by Members of the Legislature or to determine the applicability of this article to actions or threatened future action of a house of the Legislature or a committee thereof.

SEC. 3. Section 9028 of the Government Code is repealed.

SEC. 4. Section 9029 of the Government Code is repealed.

SEC 5 Section 9031 of the Government Code is repealed.

SEC. 6. Section 9032 of the Government Code is repealed.

SEC 7. Section 9926 of the Government Code is repealed.

SEC. 8. Section 9927 of the Government Code is repealed.

SEC. 9. Section 9928 of the Government Code is repealed.

SEC 10 Section 9929 of the Government Code is repealed.

SEC. 11. Section 9929.5 of the Government Code is repealed.

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. Notwithstanding Section 17580 of the Government Code, unless

otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1236

An act to add Section 1246.5 to the Business and Professions Code, relating to clinical laboratories.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. It is the intent of the Legislature, in passing this act, to promote health care in California by increasing the opportunity for citizens to obtain high quality laboratory testing by licensed clinical laboratories. The Legislature recognizes the fact that expanded access to medical testing will result in a citizenry which is more knowledgeable about the status of various bodily conditions and, therefore, more concerned about maintaining good health.

SEC. 2. Section 1246.5 is added to the Business and Professions Code, to read:

1246.5. Notwithstanding any other provision of law, any person may request, and any licensed clinical laboratory may perform, the laboratory tests specified in this section. The results from any test may be provided directly to the person requesting the test provided the test is on or for his or her own body. These test results shall be provided in a manner which presents clear information and which identifies results indicating the need for referral to a physician and surgeon.

The tests which may be conducted pursuant to this section are: pregnancy, glucose level, cholesterols, and occult blood.

The department may add additional tests to the list of tests specified in this section. However, the director may consider the addition of a test only after it has been approved by the federal Food and Drug Administration for sale to the public without a prescription in the form of an over-the-counter test kit.

CHAPTER 1237

An act to add Section 7861.4 to the Fish and Game Code, relating to fishing.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 7861.4 is added to the Fish and Game Code, to read:

7861.4 A priority for funding shall be given to programs and projects restoring, enhancing, and protecting salmon streams with funds appropriated pursuant to subparagraph (A) of paragraph (1) of subdivision (e) of Section 5907 of the Public Resources Code, that employ fishermen who are unemployed or underemployed as a result of commercial fishing restrictions within and immediately adjacent to the Klamath Management Zone imposed by federal laws or regulations.

CHAPTER 1238

An act to repeal Chapter 344 of the Statutes of 1913 and Chapter 542 of the Statutes of 1917, relating to tidelands and submerged lands and to convey certain tide and submerged lands to the City of Arcata.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. (a) There is hereby granted in trust to the City of Arcata, hereafter referred to as the "trustee" all of the right, title, and interest of the State of California, held by the state by virtue of its sovereignty in and to all tidelands and submerged lands, whether filled or unfilled, situated in the County of Humboldt and described in Section 13, hereafter referred to as "trust lands." The lands shall be held by the trustee and its successors in trust for the benefit of all the people of the state for purposes of commerce, navigation, and fisheries, and for other public trust purposes, including, but not limited to, preservation of the lands in their natural state for scientific study, open space, wildlife habitat, and recreational and visitor-oriented uses, as more particularly provided in this act.

(b) This trust grant is subject to the following express conditions:

(1) The use of the trust lands shall be in conformity with a trust lands use plan, as defined in Section 2.

(2) The trustee or its successors shall not at any time grant,

convey, give, or otherwise alienate the trust lands, or any part thereof, to any person, firm, entity, or corporation for any purposes whatsoever. The trustee may lease the trust lands, or any part thereof, for limited periods, not exceeding 50 years, for purposes consistent with the trust upon which those lands are held. The trustee may collect and retain rents and other trust revenues from those leases, under rules and regulations adopted in accordance with Section 2 and consistent with Section 5.

(3) In the management, conduct, operation, and control of the trust lands, or any improvement, betterments, or structures thereon, the trustee or its successors shall make no illegal discrimination in rates, tolls, or charges for any use or service in connection herewith, nor shall the trustee discriminate against or lawfully segregate any person or group of persons on account of sex, race, color, creed, national origin, ancestry, or physical handicap for any use or service in connection herewith.

(4) The state shall have the right to use, without charge, any transportation, landing, or storage improvements, betterments, or structures constructed upon the trust lands for any vessel or other watercraft or railroad owned or operated by or under contract to the state. The state's use of the facilities shall be governed by the trustee's rules and regulations.

(5) There is reserved to the people of the State of California the right to fish in the waters over the trust lands, with the right to convenient access to those waters over the trust lands for that purpose.

(6) There is excepted and reserved to the state all remains or artifacts of archaeological and historical significance and all deposits of minerals, including, but not limited to, all substances specified in Section 6407 of the Public Resources Code, in the trust lands, and the right to prospect for, mine, and remove those deposits from the lands

(7) The trustee shall not authorize a capital outlay project, lease, or agreement for port facilities, such as marine terminals, pipelines, or other related energy facilities on the granted lands without first requesting and receiving the approval, in writing, of the State Lands Commission. Prior to approving any such capital outlay project, lease, or agreement, the commission shall consult with other governmental agencies and shall determine that the project is in the best interests of the state and complies with applicable laws.

SEC. 2. (a) On or before January 1, 1994, the trustee shall submit to the State Lands Commission, hereafter referred to as the "commission," a trust lands use plan indicating details of intended development, preservation, or other use of the trust lands. The trustee shall thereafter submit to the commission for approval all changes of, amendments to, or extensions of the trust lands use plan. Any use of the trust lands shall be consistent with the trust lands use plan as approved by the commission.

(b) The commission shall review with reasonable promptness the

trust lands use plan submitted by the trustee and any changes or amendments to determine that they are consistent with the public trust and the requirements of this act. Based upon its review, the commission shall either approve or disapprove the plan. If the commission disapproves the plan, the commission shall furnish the trustee with its formal recommendations, and the trustee shall submit a revised plan to the commission within 180 days. If that revised plan is determined by the commission to be inconsistent with the public trust and the requirements of this act, all right, title, and interest of the trustee in and to the trust lands and improvements thereon shall revert to the state.

(c) The trust lands use plan may consist of any plan, program, or other document which includes all of the following:

(1) A general description of the type of uses planned or proposed for the trust lands. The location of these land uses shall be shown on a map or aerial photograph.

(2) The projected statewide benefit to be derived from the planned or proposed uses of the trust lands, including, but not limited to, the financial benefit and the furtherance of those purposes set forth in Section 1.

(3) The proposed method of financing the planned or proposed uses of the trust lands, including estimated capital costs, annual operating costs, and anticipated annual trust revenues.

(4) An estimated timetable for implementation of the trust lands use plan or any phase thereof.

(5) A description of how the trustee proposes to protect and preserve natural and manmade resources in connection with the use of the trust lands.

(d) The governing body of the trustee shall submit to the commission, for its approval, procedures, rules, and regulations to govern the use or development of the trust lands. These rules and regulations shall include, but not be limited to, lease rates, the bases upon which the rates are established, lease terms and conditions, provision for renegotiation of rates and terms and assignments, and other information as may be required by the commission.

(e) All leases or agreements proposed, or entered into, by any trustee after January 1, 1990, shall be consistent with the trust lands use plan submitted by the trustee and approved by the commission.

(f) Upon request, the trustee shall submit to the commission a copy of all leases and agreements entered into, renewed, or renegotiated.

SEC. 3. (a) On or before September 30 of every succeeding fifth year, commencing on September 30, 1991, the trustee shall submit a report of its utilization of the trust lands for each immediately preceding five-calendar-year period ending with June 30 of the calendar year in which the report is required to be submitted.

(b) The report shall include all of the following:

(1) A general description of the uses to which the trust lands have been placed during the period covered by the report.

(2) A list of the owners and holders of leases or permits granted or issued by the trustee, which list shall specify, as to each owner or holder, all of the following:

(A) The use to which the trust lands have been placed by the owner or holder.

(B) The consideration provided for in each lease or permit, and the consideration actually received by the trustee for the lease or permit granted or issued.

(3) An enumeration of the restrictions which the trustee has placed on the use of the trust lands and each area thereof for the period covered by the report.

SEC. 4. The trustee shall demonstrate good faith in carrying out its trust lands use plan and amending it when necessary in accordance with Section 2. If the commission determines that the trustee has substantially failed to improve, restore, preserve, or maintain the trust lands, as required by the trust lands use plan, in the time period set forth in paragraph (4) of subdivision (c) of Section 2, or has unreasonably delayed adopting that proposal, all right, title, and interest of the trustee in and to the trust lands and improvements thereon shall revert to the state.

SEC 5 (a) The trustee shall establish and maintain accounting procedures, in accordance with generally accepted accounting principles, providing accurate records of all revenues received from the trust lands and trust assets and of all expenditures of those revenues. If the trustee has several trust grants of adjacent lands and operates the granted lands as a single integrated entity, separation of accounting records for each trust grant is not required. All revenues received from trust lands and trust assets, hereafter referred to as "trust revenues," shall be expended only for those uses and purposes set forth in subdivision (a) of Section 1. The purpose of this requirement is to provide for the segregation of funds derived from the use of the trust lands in order to ensure that they are only expended to enhance the lands in accordance with the trust uses and purposes upon which the trust lands are held.

(b) Trust revenues may be used to acquire appropriate uplands to benefit and enhance the trust with the prior written consent of the commission. Property acquired with these trust revenues shall be considered an asset of the trust and subject to the terms and conditions of this act.

SEC 6. On or before October 1 of each year, the trustee shall file with the commission a detailed statement of all trust revenues and expenditures relating to its trust lands and trust assets, including obligations incurred but not yet paid, covering the fiscal year preceding submission of the statement. This statement shall be prepared according to generally accepted accounting principles and may take the form of an annual audit prepared by or for the trustee.

SEC. 7. (a) As to the expenditure of trust revenues for any single capital improvement on the trust lands involving an amount in excess of two hundred fifty thousand dollars ($250,000) in the

aggregate, the trustee shall file with the commission a detailed description of the capital improvement not less than 90 days prior to the time of any disbursement therefor or in connection therewith.

(b) Within 90 days after the time of that filing, the commission shall determine whether the capital improvement is in the statewide interest and benefit and is consistent with the conditions of this act. The commission may request the opinion of the Attorney General on the matter; and, if it does so, a copy of that opinion shall be delivered to the trustee with the notice of its determination. If the commission notifies the trustee that the capital improvement is not authorized, the trustee shall not disburse any trust revenues for, or in connection with, the capital improvement, unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction.

(c) The trustee may bring suit against the state for the purpose of securing such an order or judgment, which suit shall have priority over all other civil matters. Service shall be made upon the executive officer of the commission and the Attorney General, and the Attorney General shall defend the state in that suit. If judgment is given against the state in the suit, no costs may be recovered.

SEC. 8 (a) On June 30, 1992, and at the end of every third fiscal year thereafter, that portion of the trustee's trust revenues in excess of two hundred fifty thousand dollars ($250,000) remaining after current and accrued operating costs and expenditures directly related to the operation or maintenance of trust activities shall be deemed excess revenues.

(b) However, any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the granted lands shall not be deemed excess revenue. Any reserve fund for future capital expenditure shall be for projects that are consistent with the trust lands use plan required by Section 2 and have prior commission approval under Section 7 to be deemed nonexcess revenues. Capital improvements of the trust lands made for purposes authorized by this act may be considered as expenditures for the purpose of determining excess revenues.

(c) The excess revenues, as determined pursuant to this section, shall be allocated 85 percent to the Treasurer for deposit in the General Fund in the State Treasury and 15 percent to the trustee for expenditures consistent with this act.

SEC. 9. The commission shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with and that all other applicable provisions of law concerning the trust lands are being complied with in good faith.

SEC. 10. Reimbursement for any and all expenditures of nontrust revenues for management, maintenance, and improvements made to the trust shall be approved by the commission in advance of those expenditures, or the expenditures shall be deemed a gift to the trust.

SEC. 11. (a) Whenever the commission finds that the trustee has violated, or is about to violate, the terms of its trust grant or any other principle of law relating to its obligation under the public trust, the commission shall notify the trustee of the violations.

(b) The trustee shall have 30 days from receipt of that notice of violation to conform to the terms of its grant and the principles and laws under the public trust. If the trustee fails or refuses to so conform, the commission may bring such actions as are necessary to enforce the rights of the state and people pursuant to the public trust. The Attorney General shall represent the state and people in those actions or proceedings. If the judgment is given against the state in the action or proceeding, no costs may be recovered from the state.

SEC 12. Section 6359 of the Public Resources Code does not apply to this act.

SEC. 13. The lands granted in Section 1 are those tidelands and submerged lands in Humboldt Bay, City of Arcata, Humboldt County, California described as follows:

(a) Parcel 1. Beginning at a point S89° 30'W 5.91 ch. (390 06 ft) and S31° 52'W 16.27 ch. (1,073.82 ft) from the center of Section 32, T6N, R1E, HM, Humboldt County, California; thence from that point of beginning north 250 ft to dike, thence N 75°W 1,750 ft following the south side of the dike and crossing Daniel's Slough to a point on the section line between Sections 31 and 32; thence westward following the south side of the dike to a point on that dike S79°W 6,450 ft; thence south 6,440 ft to a point due west of Beacon number 9; thence east 4,000 ft to a point 780 ft south of "pier," as marked on United States hydrographic chart Humboldt Bay survey 1911, sheet 3; thence N54° 30'E 2,375 ft to the end of the fourth course as recited in the description of the tidelands granted to the City of Arcata (approved June 11, 1913); thence N80°E 5,750 ft to a point on the west side of the right of way of the Northwestern Pacific Railroad Company; thence following the west line of the Northwestern Pacific Railroad Company's right-of-way to a point in the center of Butcher's Slough, N27° 50'W 4,500 ft; thence N52° 30'W 6.12 ch. (403 92 ft); thence N71° 30'W 4.05 ch. (267 30 ft); thence N53° 30'W 11 26 ch. (743.16 ft); thence N31° 30'W 2.06 ch. (135.96 ft) to the point of beginning.

(b) Parcel 2. Beginning in the center of Butcher Slough at a point which is distant 300 ft north from the quarter section line forming the south line of the northeast quarter of Section 32, T6N, R1E, HM; thence parallel to that quarter section line N89° 59'W 803.8 ft, more or less, to the east line of the the railroad right-of-way of the Arcata and Mad River Railroad Company, as defined in the deed from Elias Sharp dated January 6, 1876, and recorded in the office of the County Recorder of Humboldt County in Book "W" of Deeds, Page 578; thence S23° 45'W 35.6 ft to the north point of a parcel of land conveyed by William M Campbell to the California and Northern Railway Company by deed dated November 1, 1901, and recorded in the Recorder's Office in Book 77 of Deeds, Page 75; thence along the easterly line of that parcel S13° 39'W 275.7 ft, more or less, to the

southeast corner of the parcel, which corner is situated on the above-mentioned quarter section line; thence S89° 59'E on the quarter section line to the east line of the railroad right-of-way conveyed by R. W. Bull and wife to R. H. Emmerson and wife by deed recorded in the office of the County Recorder of Humboldt County, California, in Book 5 of the Official Records, Page 110; thence following that east line S11° 33'W 94.7 ft to the intersection of the east line with the east line of the right-of-way of the Northwestern Pacific Railroad Company; thence southerly following the easterly line of the railroad right-of-way to a point, this point is on the prolongation easterly of the southerly line of the existing sewage disposal plant sludge beds, and is on the north line of the road leading to the Arcata Sewage Disposal Plant as referred to in the deed from the City of Arcata to Durable Fir Lumber Company recorded February 27, 1952, in Book 199, Page 234, Document No. 2366, Humboldt County Official Records; thence N57° 40' 15"E along that prolongation and the north line of that road 34.58 ft to the west line of Old State Highway Route 101 (South "G" St.); thence northerly along the highway following the curve thereof, 154.44 ft to the end of the curve; thence N15° 27'W along the highway 484.72 ft; thence N0° 12'E along the highway 231.9 ft; thence N15 50'E 890.13 ft along the highway to its intersection with the eastern terminus of the curve in the south end of the south line of the extension of "H" Street in the City of Arcata, as that extension was conveyed to the County of Humboldt by deed recorded September 22, 1934, in Book 216 of Deeds, Page 159, Humboldt County Records; thence still along that line of "H" Street extension in the northerly direction to a point that is distant 300 ft northerly along that street from the quarter section line first above-mentioned; thence parallel with that quarter section line to the middle of Butcher Slough in a westerly direction, and thence northerly on the same to the point of beginning.

(c) Parcel 3. Beginning at a point 303 ft west of the quarter section corner in the center of that Section 32; thence N13° 30'E 277 ft to a point distant 15 ft from and on the east side of the centerline of Arcata and Mad River Railroad as it existed on November 1, 1901; thence following a line parallel to and distant 15 ft from the center of that Arcata and Mad River Railroad S31° 25'W 316.5 ft to a line running east and west through the center of Section 32; thence east 106 ft to the point of beginning, excepting therefrom any portion thereof which lies westerly of the easterly line of a strip of land 66 ft wide, lying 33 ft on each side of the centerline of the main tract of the Northwestern Pacific Railroad Company.

(d) Parcel 4. Commencing at the quarter section corner in the center of that Section 32; thence along the quarter section line running east and west through the center of that section N89° 59' W 295.3 ft to the east line of the railroad right-of-way conveyed by Ralph W. Bull and wife to R. H. Emmerson and wife by deed recorded February 13, 1947, in Book 5 of Official Records Page 110, Recorder's File No. 1450, and the point of beginning of the parcel of land here

described; thence following that east line S11° 33'W 94.7 ft to the intersection of that east line with the easterly line of the right-of-way of the Northwestern Pacific Railroad Company; thence northerly along that easterly line to the north line of the northeast quarter of the southwest quarter of that Section 32; thence along that north line S89° 59'E to the point of beginning excepting therefrom any portion thereof that lies within a strip of land one foot wide, the centerline of which is described as follows:

Beginning at a point 1,745.42 ft south and 314.10 ft west of the concrete monument at the intersection of the centerline of Fifth and H Streets in the City of Arcata; and running thence from a tangent that bears S6° 56' 30"W along a curve to the right with a radius of 1,000 ft through an angle of 4° 15', a distance of 74.27 ft; thence S11° 11' 30"W 97.96 ft; thence along a curve to the left with a radius of 55 ft through an angle of 50° 4' 30", a distance of 48.07 ft; thence S51° 7'W 25.50 ft to the end of the herein described centerline.

SEC. 14. Chapter 344 of the Statutes of 1913 is repealed.

SEC. 15. Chapter 542 of the Statutes of 1917 is repealed.

SEC 16 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1239

An act to amend Sections 94331, 94333, 94334, 94339, 94342, 94343, and 94350 of, to add Sections 69507.7 and 94311.1 to, to add Article 2.5 (commencing with Section 94316) to Chapter 3 of Part 59 of, and to repeal Section 94311 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 69507.7 is added to the Education Code, to read:

69507.7. (a) The Student Aid Commission shall give written notice to the Superintendent of Public Instruction when, in the administration of a program review pursuant to Section 69763, evidence is discovered indicating that a private postsecondary educational institution has failed to comply with Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59.

(b) Evidence that a private postsecondary educational institution has violated Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59 shall be regarded as evidence that the institution is not legally authorized to provide courses of instruction for the purpose of determining the institution's eligibility to participate in loan programs administered by the Student Aid Commission

(c) In addition to notifying the Superintendent of Public Instruction pursuant to subdivision (a), the Student Aid Commission may, unless prohibited by federal law, institute an emergency action for the limitation, suspension, or termination of an institution's eligibility to participate in loan programs administered by the Student Aid Commission, as provided in Article 11 of Title 5 of the California Code of Regulations, based on evidence that the institution has violated Article 2 5 (commencing with Section 94316) of Chapter 3 of Part 59, except that no emergency action shall be instituted for a violation of subdivision (a) of Section 94319.6.

(d) Any costs to the Student Aid Commission for the administration of this section shall be reimbursed by the superintendent from the Private Postsecondary Education Administration Fund.

SEC. 1.5. Section 69507 7 is added to the Education Code, to read:

69507 7. (a) The Student Aid Commission shall give written notice to the Council for Private Postsecondary and Vocational Education when, in the administration of a program review pursuant to Section 69763, evidence is discovered indicating that a private postsecondary educational institution has failed to comply with Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59.

(b) Evidence that a private postsecondary educational institution has violated Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59, shall be regarded as evidence that the institution is not legally authorized to provide courses of instruction for the purpose of determining the institution's eligibility to participate in loan programs administered by the Student Aid Commission.

(c) In addition to notifying the Council for Private Postsecondary and Vocational Education pursuant to subdivision (a), the Student Aid Commission may, unless prohibited by federal law, institute an emergency action for the limitation, suspension, or termination of an institution's eligibility to participate in loan programs administered by the Student Aid Commission, as provided in Article 11 of Title 5 of the California Code of Regulations, based on evidence that the institution has violated Article 2.5 (commencing with Section 94316) of Chapter 3 of Part 59, except that no emergency action shall be instituted for a violation of subdivision (a) of Section 94319.6.

(d) Any costs to the Student Aid Commission for the administration of this section shall be reimbursed by the council from the vocational education account in the Private Postsecondary and Vocational Education Administration Fund.

SEC. 2. Section 94311 of the Education Code is repealed.

SEC. 3. Section 94311.1 is added to the Education Code, to read:

94311 1. (a) No private postsecondary educational institution may offer vocational or job training programs, or establish a branch or satellite campus at which those programs are offered, unless the institution, or the branch or satellite campus, has been approved by the superintendent to operate in California.

(b) The superintendent shall not approve an institution to operate until the superintendent has conducted a qualitative review and assessment of the institution's activities in California and has determined all of the following.

(1) The quality and content of each course or program of instruction, training, or study may reasonably and adequately be expected to achieve the stated objective for which the course or program is offered.

(2) There is in the institution adequate space, equipment, instructional material, and instructor personnel to provide training of the quality needed to attain the object of that particular course.

(3) Every instructor and administrator holds an applicable and valid Certificate of Authorization for Service issued by the superintendent in the specified competence area in which the individual will serve. Certificates may be issued to administrators and to instructors upon the superintendent's determination that the applicant possesses adequate academic, experiential, and professional qualifications and that grounds for denying the issuance of the certificate, as provided in Section 480 of the Business and Professions Code, do not exist The superintendent shall not issue a certificate to any instructor or member of the administrative staff who has been convicted of, or who has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of federal or state funds, or who has been judicially or administratively determined to have committed any violation of law involving state or federal funds.

(4) The institution maintains written records of the student's previous education and training with recognition, where applicable.

(5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to tardiness, absence, grading policy, and rules of operation and conduct is given to students prior to enrollment.

(6) The institution maintains and enforces adequate standards relating to attendance, satisfactory academic progress, and student performance.

(7) The institution complies with all local city, county, city and county, municipal, state, and federal regulations relative to the safety and health of all persons upon the premises such as fire, building, and sanitation codes. The superintendent may require evidence of compliance.

(8) The institution does not exceed enrollment which the facilities and equipment of the institution can reasonably handle.

(9) The institution's administrators and instructors possess the professional qualifications necessary to comply with this chapter and

the institution's officers, directors, and owners demonstrate financial and fiduciary responsibility, as prescribed by statute or regulations adopted by the superintendent.

(10) The institution is in compliance with this chapter and has developed policies and procedures designed to assure that compliance.

(11) Application for approval is made in writing on forms prescribed by the superintendent.

(c) Within 90 days following the receipt of the institution's application, and prior to granting any approval, a representative of the superintendent shall personally inspect the institution and verify the institution's compliance with the standards prescribed by this chapter. The onsite inspection shall include an inspection of the institution's facilities and records, interviews of administrators, faculty, and students, and an observation of class instruction, as determined to be appropriate by the superintendent.

(d) Within 90 days following the inspection, the superintendent shall do one of the following:

(1) If the institution is in compliance with this chapter and has not operated in violation of this chapter, the superintendent may grant approval. If the institution has operated for more than two years, the approval to operate shall not exceed three years. If the institution has operated for less than two years, the approval to operate shall not exceed one year.

(2) If the institution is in compliance with this chapter but has previously operated in violation of this chapter or if the superintendent, in his or her discretion, determines that an unconditional grant of approval to operate is not in the public interest, the superintendent may grant a conditional approval to operate subject to whatever restrictions the superintendent deems appropriate. A conditional approval to operate shall not exceed one year.

(3) The superintendent may deny the application.

(e) If the superintendent fails to approve, conditionally approve, or deny the application within the time prescribed in subdivision (d), the institution's application shall be deemed denied.

(f) If the superintendent grants approval to operate to an institution, or a branch or satellite campus, that has not been previously approved or authorized to operate, the superintendent shall conduct an additional qualitative review and assessment, as provided in subdivision (b) and (c), not less than three months nor more than six months after approval to operate has been granted, to determine whether the institution, or branch or satellite campus, complies with this chapter.

(g) The superintendent may deny any application for approval to operate, or may suspend or revoke any approval to operate, for any of the following reasons:

(1) A violation of this chapter, or of any standard, rule, or regulation established under this chapter.

(2) The furnishing of false, misleading, or incomplete information to the superintendent, or the failure to furnish information requested by the superintendent.

(3) A finding that an owner, person in control, director, or officer of the institution is not in compliance with any of subdivisions (e), (f), and (g) of Section 94316.6.

(4) The failure of the institution to maintain the minimum educational standards prescribed by this chapter, or to maintain standards that are the same as, or substantially equivalent to, those represented in the institution's application, advertising and other solicitations, and catalog.

(5) The making of any untrue or misleading statement to any prospective student.

(6) The failure to maintain financial resources as required by subdivisions (b) and (c) of Section 94316.6.

(7) The failure to provide timely and correct refunds to students.

(8) The payment of a commission or other compensation for the performance of any act or service in violation of this chapter.

(9) Attempting to confer a degree, diploma, or certificate on any student in violation of this chapter.

(10) The failure to correct any noncompliance with this chapter, or with any standard, rule, or regulation established pursuant to this chapter.

(11) The conducting of business or instruction at any location not approved by the superintendent.

(h) Proceedings in connection with the denial of an application for approval to operate shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the superintendent shall have all of the powers granted therein.

(i) (1) All private postsecondary educational institutions operating on December 31, 1989, pursuant to authority granted under former subdivision (c) of Section 94311 shall automatically be granted a two-year provisional approval to operate, for any institution that participates in any publicly funded or guaranteed student financial assistance program, and a three-year provisional approval to operate for any institution that does not so participate. Each institution granted a two-year provisional approval to operate pursuant to this paragraph shall file an application for approval to operate by January 1, 1991, for which purpose, notwithstanding subdivision (c), the superintendent shall have 180 days to inspect the institution and verify compliance with this chapter.

(2) The superintendent may restrict, suspend, or terminate an institution's provisional approval to operate if the institution violates this chapter or violated the chapter in effect prior to January 1, 1990.

(3) The superintendent shall conduct a review of all institutions subject to this subdivision to determine whether any violations have occurred. The superintendent shall complete the review by April 1, 1991, of all the institutions that have a cumulative gross student loan

default rate, as determined by the Student Aid Commission, of 40 percent or more as of December 31, 1989, on all loans guaranteed or reinsured by the state or federal government.

(j) All institutions operating in California on December 31, 1989, pursuant to prior authority of subdivision (a) or (b) of former Section 94311, shall automatically be granted provisional approval to operate for a period not to exceed three years. On or before June 30, 1992, the superintendent shall work in cooperation with the appropriate state boards or agencies, and with the Federal Aviation Administration, to review each of these institutions to determine whether the institution is in compliance with the requirements of this chapter.

(k) All institutions operating in California on December 31, 1989, pursuant to the prior authority of subdivision (d) of former Section 94311, shall automatically be granted provisional approval to operate for a period not to exceed three years. On a specified date to be determined by the superintendent on or before June 30, 1992, each institution granted a provisional approval pursuant to this subdivision, shall file a completed application for approval to operate pursuant to this section.

SEC. 3.5. Section 94311.1 is added to the Education Code, to read.

94311.1. (a) No private postsecondary educational institution may offer vocational or job training programs, or establish a branch or satellite campus at which those programs are offered, unless the institution, or the branch or satellite campus, has been approved by the superintendent to operate in California.

(b) The superintendent shall not approve an institution to operate until the superintendent has conducted a qualitative review and assessment of the institution's activities in California and has determined all of the following:

(1) The quality and content of each course or program of instruction, training, or study may reasonably and adequately be expected to achieve the stated objective for which the course or program is offered.

(2) There is in the institution adequate space, equipment, instructional material, and instructor personnel to provide training of the quality needed to attain the object of that particular course

(3) Every instructor and administrator holds an applicable and valid Certificate of Authorization for Service issued by the superintendent in the specified competence area in which the individual will serve. Certificates may be issued to administrators and to instructors upon the superintendent's determination that the applicant possesses adequate academic, experiential, and professional qualifications and that grounds for denying the issuance of the certificate, as provided in Section 480 of the Business and Professions Code, do not exist. The superintendent shall not issue a certificate to any instructor or member of the administrative staff who has been convicted of, or who has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of federal

or state funds, or who has been judicially or administratively determined to have committed any violation of law involving state or federal funds.

(4) The institution maintains written records of the student's previous education and training with recognition, where applicable.

(5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to tardiness, absence, grading policy, and rules of operation and conduct is given to students prior to enrollment

(6) The institution maintains and enforces adequate standards relating to attendance, satisfactory academic progress, and student performance.

(7) The institution complies with all local city, county, city and county, municipal, state, and federal regulations relative to the safety and health of all persons upon the premises such as fire, building, and sanitation codes The superintendent may require evidence of compliance.

(8) The institution does not exceed enrollment which the facilities and equipment of the institution can reasonably handle.

(9) The institution's administrators and instructors possess the professional qualifications necessary to comply with this chapter and the institution's officers, directors, and owners demonstrate financial and fiduciary responsibility, as prescribed by statute or regulations adopted by the superintendent

(10) The institution is in compliance with this chapter and has developed policies and procedures designed to assure that compliance.

(11) Application for approval is made in writing on forms prescribed by the superintendent

(c) Within 90 days following the receipt of the institution's application, and prior to granting any approval, a representative of the superintendent shall personally inspect the institution and verify the institution's compliance with the standards prescribed by this chapter. The onsite inspection shall include an inspection of the institution's facilities and records, interviews of administrators, faculty, and students, and an observation of class instruction, as determined to be appropriate by the superintendent

(d) Within 90 days following the inspection, the superintendent shall do one of the following:

(1) If the institution is in compliance with this chapter and has not operated in violation of this chapter, the superintendent may grant approval. The superintendent shall not grant approval to operate beyond March 31, 1991

(2) If the institution is in compliance with this chapter, but has previously operated in violation of this chapter, or if the superintendent, in his or her discretion, determines that an unconditional grant of approval to operate is not in the public interest, the superintendent may grant a conditional approval to operate subject to whatever restrictions the superintendent deems

appropriate. The superintendent shall not grant conditional approval to operate beyond March 31, 1991.

(3) The superintendent may deny the application.

(e) If the superintendent fails to approve, conditionally approve, or deny the application within the time prescribed in subdivision (d), the institution's application shall be deemed denied.

(f) If the superintendent grants approval to operate to an institution, or a branch or satellite campus, that has not been previously approved or authorized to operate, the superintendent shall conduct an additional qualitative review and assessment, as provided in subdivisions (b) and (c), not less than three months nor more than six months after approval to operate has been granted, to determine whether the institution, or branch or satellite campus, complies with this chapter.

(g) The superintendent may deny any application for approval to operate, or may suspend or revoke any approval to operate, for any of the following reasons:

(1) A violation of this chapter, or of any standard, rule, or regulation established under this chapter.

(2) The furnishing of false, misleading, or incomplete information to the superintendent, or the failure to furnish information requested by the superintendent.

(3) A finding that an owner, person in control, director, or officer of the institution is not in compliance with subdivision (e), (f), or (g) of Section 94316.6.

(4) The failure of the institution to maintain the minimum educational standards prescribed by this chapter, or to maintain standards that are the same as, or substantially equivalent to, those represented in the institution's application, advertising and other solicitations, and catalog.

(5) The making of any untrue or misleading statement to any prospective student.

(6) The failure to maintain financial resources as required by subdivisions (b) and (c) of Section 94316.6.

(7) The failure to provide timely and correct refunds to students.

(8) The payment of a commission or other compensation for the performance of any act or service in violation of this chapter.

(9) Attempting to confer a degree, diploma, or certificate on any student in violation of this chapter.

(10) The failure to correct any noncompliance with this chapter, or with any standard, rule, or regulation established pursuant to this chapter.

(11) The conducting of business or instruction at any location not approved by the superintendent.

(h) Proceedings in connection with the denial of an application for approval to operate shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the superintendent shall have all of the powers granted therein

(i) (1) All private postsecondary educational institutions operating on December 31, 1989, pursuant to authority granted under Section 94311, as it existed on December 31, 1989, shall automatically be granted a one-year provisional approval to operate.

(2) The superintendent may restrict, suspend, or terminate an institution's provisional approval to operate if the institution violates this chapter or violated the chapter in effect prior to January 1, 1990.

(3) The superintendent shall complete a review by December 31, 1990, of all institutions operating on December 31, 1989, pursuant to the authority of subdivision (c) of Section 94311, as it existed on December 31, 1989, that have a cumulative gross student loan default rate, as determined by the Student Aid Commission, of 60 percent or more as of December 31, 1989. Any determination of fact or law by the superintendent shall not be binding upon the Council for Private Postsecondary and Vocational Education.

SEC. 4. Article 2.5 (commencing with Section 94316) is added to Chapter 3 of Part 59 of the Education Code, to read:

Article 2.5 Student Protections

94316. (a) This article shall be known and may be cited as the Maxine Waters School Reform and Student Protection Act of 1989.

(b) The Legislature finds and declares that students have been substantially harmed and the public perception of reputable institutions has been damaged because of the fraudulent, deceptive, and unfair conduct of some institutions that offer courses of instruction for a term of two years or less that are supposed to prepare students for employment in various occupations. Students have been induced to enroll in these schools through various misrepresentations including misrepresentations related to the quality of education, the availability and quality of equipment and materials, the language of instruction, and employment and salary opportunities. Some of the most egregious misrepresentations are made by representatives who recruit students at places other than the institution's premises. Some students have been enrolled who do not have the ability to benefit from the instruction In addition, the quality of the education offered is often inadequate to enable students to obtain jobs after the completion of instruction.

(c) The Legislature further finds and declares that many students who enroll in these schools pay their tuition from the proceeds of loans and grants guaranteed or provided by the state and federal governments. Students who leave schools before the completion of instruction, often because of misrepresentations and inadequate instruction, do not receive adequate refunds of tuition for the instruction not received. Students remain liable to repay student loans but are frequently unable to do so in part because they were unable to obtain the proper educational preparation for jobs. Students are also harmed by the closure of institutions, often caused by the fraud or mismanagement of the institution's operators,

because the students neither obtain the education promised nor a refund of tuition and the cost of materials. As a result of all of the foregoing, the state and federal governments spend many millions of dollars annually to satisfy loan guarantees for often inadequate and misrepresented vocational school courses.

(d) It is the intent and purpose of this article to protect students and reputable institutions, assure appropriate state control of business and operational standards, assure minimum standards for educational quality, prohibit misrepresentations, require full disclosures, prohibit unfair dealing, and protect student rights. It is the intent and purpose of this article to save millions of dollars of taxpayer's funds from being misused to underwrite the activities of institutions that depart from the standards of fair dealing and the requirements of this article.

(e) This article shall be liberally construed to effectuate its intent and achieve its purposes.

94316.1. (a) This article applies to private postsecondary educational institutions other than institutions that (1) are incorporated and lawfully operate as nonprofit public benefit corporations pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and are not managed or administered by any entity for profit, or (2) either exclusively confer degrees upon the completion of a course of study of two or more years or regularly confer degrees such as master or doctorate on students who have completed an undergraduate course of study of two or more years at a college or university. Except as otherwise provided, this article also applies to schools subject to Section 94319.13

(b) Section 94312 shall not apply to institutions subject to this article. In the event of a conflict between any other provision of this chapter and this article, this article applies

94316.2. The following definitions apply to this article:

(a) "Owner" means any person who has a legal or equitable interest in 10 percent or more of an institution's stock or assets.

(b) "Person in control" means a relative by blood or marriage of an owner, director, or officer, or a person who has the capacity, directly or indirectly, to direct or influence the management, policies, and conduct of the institution.

(c) "Representative" means an employee, an agent as defined in Section 2295 of the Civil Code, an agent subject to Section 94333, an agency subject to Section 94334, or any person who, for compensation, solicits, promotes, advertises, or recruits students or is involved with enrollment, admissions, student attendance, administration, financial aid, instruction, or job placement assistance on behalf of an institution

(d) "Superintendent" means the Superintendent of Public Instruction and any state agency, department, or other governmental entity that may succeed the Superintendent of Public Instruction in the approval, authorization, licensure, regulation, or

oversight of, or any other duty or function relating to, postsecondary educational institutions.

94316.3. (a) No institution or representative of an institution shall make any statement that is in any manner untrue or misleading, either by actual statement, omission, or intimation.

(b) No institution or representative of an institution shall engage in any false, deceptive, misleading, or unfair act in connection with any matter, including any of the following: the institution's advertising and promotion, the recruitment of students for enrollment in the institution, the offer or sale of a course of instruction, the enrollment or testing of students, the preparation or submission of a student's application for a student loan or grant, the financing of a course of instruction, the withholding of educational materials or loan or grant funds from a student, training and instruction, the collection of payments, or job placement.

(c) An institution is responsible for any violation of this article committed by a representative of the institution.

(d) No institution shall offer to pay or pay any consideration to a student or prospective student to act as a representative of the institution with regard to the solicitation or recruitment of any person for enrollment in the institution.

(e) No institution shall compensate a representative involved in recruitment, enrollment, admissions, or student attendance on the basis of a commission, bonus, quota, or other similar method unless each student for whom the compensation is to be paid completes the course of instruction.

(f) No institution shall pay any consideration to a person to induce that person to listen to a solicitation for enrollment in the institution, visit the institution, or to sign an agreement for a course of instruction.

(g) No institution shall use a misleading name in any manner implying that the institution is affiliated with any governmental agency, public or private corporation, agency, or association.

(h) No institution or any representative of an institution shall make any untrue or misleading statement of, or change in, any student test score, grade, record of grades, attendance record, financial information, information or record relating to the student's eligibility for financial assistance or attendance at the institution, or any other record or document required by this chapter

(i) No institution shall use the terms "approval," "approved," "approval to operate," or "approved to operate," without stating clearly and conspicuously that approval to operate means compliance with minimum state standards and does not imply any endorsement or recommendation by the state or by the superintendent.

94316.4. (a) In addition to making any other required disclosures, a representative of an institution who in any manner solicits or recruits any person at any place other than the institution's premises for enrollment in a course of instruction shall disclose the

following, orally and in a correctly dated writing printed in at least 10-point type and signed by the representative, before attempting to solicit or recruit or make any presentation promoting the institution:

(1) The representative is a paid recruiter for an institution.

(2) The representative is recruiting enrollment for an institution.

(3) The representative is not offering a job, making job referrals, or conducting a survey.

(4) There is no guarantee of a job after a student graduates from the course of instruction.

(5) The amount of compensation the representative will receive if the person enrolls and completes the course of instruction.

(6) The total cost of the course of instruction and materials.

(7) Refund and cancellation rights.

(8) If the person obtains a loan to pay for the course of instruction, the person will have the sole responsibility to repay the full amount of the loan, less the amount of any refund, in monthly payments after the person stops attending classes.

(9) If the student loan is guaranteed or reinsured by the state or federal government and the student defaults on the loan:

(A) The federal or state government or the loan guarantee agency can take action against the student including applying any income tax refund to which the person is entitled to reduce the balance owed on the loan

(B) The student generally will not be eligible for any other federal financial assistance for education or for government housing assistance until this loan is repaid.

(10) The disclosures required by paragraph (2) of subdivision (a) of Section 94316.10

(11) If the institution has offered the course of instruction for less than one year, the disclosure required by paragraph (3) of subdivision (a) of Section 94316.10.

(b) A representative who solicits or recruits any person as described in subdivision (a) shall provide the person at that time with a copy of the institution's current catalog or brochure, containing the information described in paragraph (4) of subdivision (a) of Section 94316.10, which the person may retain without charge.

(c) No institution shall enter an agreement for a course of instruction with, or prepare or assist in the preparation of a student loan or grant application for, a person solicited or recruited as described in subdivision (a) within 10 days of the date on which the person was solicited or recruited.

94316.5. (a) No institution that has offered a course of instruction at any time during the time period described in subdivision (d) shall continue to offer that course of instruction if more than 40 percent of the students who began the course and were originally scheduled at the time of enrollment to complete the course during that period failed to complete it or if more than 30 percent of the students who completed the course within that period failed to obtain employment, within six months of completing the course, in the

occupations or job titles to which the course of instruction was represented to lead. For the purpose of this subdivision, "course of instruction" or "course" includes all courses of instruction, however denominated, that lead or are represented to lead to the same or closely related occupations or job titles.

(b) No institution that has offered courses of instruction at any time during the time period described in subdivision (d) shall continue to offer any course of instruction if more than 40 percent of all the students who began the courses and were originally scheduled at the time of enrollment to complete these courses during that time period failed to complete these courses or if more than 30 percent of all the students who completed the courses within that time period failed to obtain employment, within six months of completing the courses, in the occupations or job titles to which the courses of instruction were represented to lead.

(c) An institution shall maintain records of the name, address, and telephone number of students who enroll in a course of instruction and of students who graduate from that course of instruction. An institution shall inquire whether students who complete a course of instruction obtain employment in the occupation to which the course of instruction is represented to lead. The inquiry shall be documented by a list indicating the student's name, address, and telephone number; the employer's name and address; the name and address of the person who provided the information to the institution; the name, title, or description of the job; and the date the student obtained employment.

(d) The superintendent may permit an institution to exclude specific students from the calculation of the percentage of students who failed to obtain employment within six months of completing a course of instruction only if all of the following conditions are satisfied:

(1) For each student for whom the institution seeks an exclusion, the institution shall submit to the superintendent the name and current address and telephone number of the student and the student's statement, completed in accordance with paragraph (2), indicating both of the following:

(A) The student does not seek employment within six months of completing the course of instruction in the occupations or job titles to which the course of instruction leads or was represented to lead.

(B) The reasons why the student does not seek employment.

(2) The statement described in paragraph (1) shall be made by the student in the student's own handwriting within six months after the student completed the course of instruction and shall be signed and dated by the student.

(3) No institution or representative of an institution shall offer or pay any consideration, make any untrue or misleading statement, or engage in any deceptive or unfair practice to obtain a student's statement.

(4) The superintendent shall make a reasonable effort to contact

each student for whom a statement is submitted to verify the accuracy of the student's statement and that no violation of paragraph (3) has occurred. The superintendent shall maintain a record of each contact.

(5) The institution shall pay all reasonable costs and expenses incurred by the superintendent in connection with this subdivision at a time designated by the superintendent.

(6) The superintendent may exclude a specific student if the superintendent verifies the student's statement after contacting that student as provided in paragraph (4). The superintendent shall not exclude a specific student if the superintendent does not verify the student's statement or if the superintendent is unable to contact the student after a reasonable effort. The superintendent shall not exclude any student if the institution or a representative of the institution violated paragraph (3) or if the institution fails to make payment as required by paragraph (5). The superintendent shall send written notice to the institution within 60 days of the date the institution submitted the student's statement of whether the superintendent has excluded the student.

(7) This subdivision applies only if an institution fails to comply with subdivisions (a) or (b) because an insufficient number of students obtained employment within six months of completing a course of instruction, and the superintendent's grant of the institution's request for the exclusion of specific students would result in the institution's satisfaction of the requirements of subdivisions (a) and (b).

(e) For the purpose of subdivisions (a) and (b), "the time period" or "that period" means the following:

(1) For courses of instruction that an institution proposes to offer during 1991, the one-year period that ended not more than six months before the date the institution proposes to continue to offer a course of instruction.

(2) For courses of instruction that an institution proposes to offer on and after January 1, 1992, the two-year period that ended not more than six months before the date the institution proposes to continue to offer a course of instruction.

(f) This section shall become operative on January 1, 1991.

94316.6. No institution shall enter into an agreement with any person to provide to that person any course of instruction if any of the following has occurred:

(a) The institution has failed to comply at all times with the following:

(1) All of the minimum criteria set forth in Section 94311, as added by Senate Bill 190 in the 1989–90 Regular Session of the Legislature, or Section 94311.1, whichever is applicable.

(2) If the institution is accredited, all standards, policies, criteria, and guidelines of the accrediting agency which accredited the institution

(3) All of the applicable provisions of this chapter including this

article.

(b) The institution fails to have available sufficient funds to pay all operating expenses due within 30 days. For the purpose of this subdivision, "funds" means cash or assets which can be converted into cash within seven days.

(c) The institution fails to maintain a ratio of current assets to current liabilities of 1.25 to 1, as determined in accordance with generally accepted accounting principles. For the purpose of this subdivision, "current assets" does not include any of the following: (1) intangible assets, including goodwill, going concern value, organization expense, startup costs, long-term prepayment of deferred charges, and nonreturnable deposits; or (2) state or federal grant funds that are not the property of the institution but are held for future disbursement for the benefit of students.

"Current liabilities" shall include unearned tuition.

(d) The institution's liabilities exceed its assets. "Assets" shall not include any item described in paragraphs (1) and (2) of subdivision (c). "Liabilities" shall include unearned tuition.

(e) The institution has had operating losses, as determined under generally accepted accounting principles, over at least the two most recent years.

(f) Under a fund accounting system, the institution's unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years

(g) The institution has failed to make timely refunds to students or has not satisfied, within 30 days of its issuance, a final judgment obtained by a student against the institution.

(h) The institution or an owner, person in control, director, or officer of the institution is found in any criminal, civil, or administrative proceeding to have violated any law regarding the obtaining, maintenance, or disbursement of state or federal loan or grant funds, or any other law substantially related to the operation of the institution.

(i) The institution, or an owner, person in control, director, or officer of the institution, has unpaid financial liabilities involving the improper acquisition, use, expenditure, or refund of state or federal financial aid funds.

(j) An owner, person in control, director, or officer of the institution (1) owned or served as a director or officer of another institution within one year before that institution's closure, (2) had the capacity, directly or indirectly, to direct or influence the management, policies, and conduct of the closed institution, and (3) failed to pay to all students of the closed institution full refunds or full compensation for actual damages resulting from the closure that were not paid by the closed institution.

94316.7. If any person willfully violates this article and the violation results in the closure of an institution, that person shall pay to all students of the closed institution full refunds or full compensation for actual damages resulting from the closure that

were not paid by the closed institution.

94316.8. No institution shall establish a branch or satellite campus unless the branch or satellite campus has been first approved by the superintendent as complying with the minimum criteria prescribed in Section 94311, as added by Senate Bill 190 in the 1989–90 Regular Session of the Legislature, or Section 94311.1, whichever is applicable, and unless the institution complies with this chapter.

94316.10. (a) Before a person executes an agreement obligating that person to pay any money to an institution for a course of instruction or related materials, the institution shall provide the person with all of the following:

(1) A copy of the agreement.

(2) If the institution has offered the course of instruction for at least one year, it shall provide orally and in writing all of the following information:

(A) The completion rate for students in the course of instruction for the most recent calendar year that ended not less than 18 months prior to the date of disclosure This rate shall be calculated by determining the percentage of students enrolled in the course of instruction who were originally scheduled, at the time of enrollment, to complete the course of instruction in that calendar year that successfully completed the course of instruction, or obtained full-time employment in the occupation or job title category for which the training was offered, within 150 percent of the amount of time normally required to complete the course of instruction.

(B) The job placement rate for students who were originally scheduled, at the time of enrollment, to complete the course of instruction in the most recent calendar year that ended not less than 18 months prior to the date of disclosure. In calculating this rate, the institution shall consider as not having obtained employment any graduate or other student for whom the institution does not possess evidence, documented in the student's file, showing that the graduate or other student has obtained employment in the occupation or job title category for which the course of instruction is offered.

(C) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.

(D) If the institution or a representative of the institution makes any express or implied claim about the salary which may be earned after completing a course of instruction, such as a claim that the student may be able to repay a student loan from the salary received at a job obtained following completion of the course of instruction:

(i) The percentage of students who were originally scheduled, at the time of enrollment, to complete the course of instruction in the most recent calendar year that ended not less than six months prior to the date of disclosure who earn salaries at or above the claimed level.

(ii) The ranges of monthly salaries earned by these students in two hundred dollar ($200) increments and the number of these

students in each salary range.

(E) If the institution or a representative of the institution in any manner represents that the course of instruction might lead to employment in an occupation or job title for which a state licensing examination is required:

(i) All licensure or certification requirements established by the state for the occupation or job title category.

(ii) The pass rate of graduates of the course of instruction for the most recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certification examination required by the state for the particular occupation or job title.

(3) If the institution has offered the course of instruction for less than one year, the following statement: "This course is new. We are not able to tell you how many students graduate, how many students find jobs, or how much money you can earn after finishing this course."

(4) A current catalog or brochure containing information describing the courses offered, program objectives, length of program, faculty and their qualifications, schedule of tuition payments, fees, and all other charges and expenses necessary for completion of the course of instruction, cancellation and refund rights, the total cost of tuition over the entire period, and all other material facts concerning the institution and the course of instruction that might reasonably affect the student's decision to enroll.

(b) The information required by paragraph (2) of subdivision (a) shall be based on an inquiry by the institution and shall be documented by a list indicating the student's name, address, and telephone number; the employer's name, address, and telephone number; the name and address or telephone number of the person who provided the information to the institution; the name, title, or description of the job; the date the student obtained the job; and the amount of the salary, if any salary claim has been made.

(c) No institution which has offered a course of instruction for less than one year shall make any express or implied claims about the salary that a student may earn after completing the course of instruction.

(d) The institution shall provide the catalog or brochure described in paragraph (4) of subdivision (a) to any person upon request.

(e) The written disclosure of information required by subparagraphs (A), (B), and (E) of paragraph (2) of subdivision (a) may be made on the form prescribed in Appendix A, Form I, in 34 Code of Federal Regulations, Part 668, or any other similar form prescribed by law for the disclosure of that information.

(f) No institution shall obtain the signature of any person to an agreement obligating that person to pay any money to the institution until the person has had a reasonable opportunity to read and review all of the items described in subdivision (a).

(g) For the purpose of subdivision (a), a student is "originally

scheduled, at the time of enrollment, to complete the course of instruction" on the date when the student will have been enrolled in the course of instruction for the amount of time normally required to complete the course of instruction. The "amount of time normally required to complete the course of instruction" is the period of time specified in the institution's enrollment contract, catalog, or other materials for completion of the course of instruction by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application (if any), whichever is less. However, the "amount of time normally required to complete the program" shall be calculated on a pro rata basis for students enrolled on a less than full-time basis.

(h) The disclosure of any information pursuant to Section 94316.4 shall not relieve any institution of any obligation to make any disclosure required under this section.

94316.12. If a state board, bureau, department, or agency has established the minimum number of classes or class hours or the minimum criteria of a course of instruction necessary for licensure in an occupation and an institution offers a course of instruction differing from the state agency's minimum requirements, the institution shall disclose orally and in writing the state agency's minimum requirements and how the course of instruction differs from those criteria. The institution shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the institution for the course of instruction.

94316.14 (a) Every institution shall file annually with the superintendent, on July 1, or another date designated by the superintendent, a report subscribed under penalty of perjury that contains all of the following:

(1) The information described in subdivisions (a) and (b) of Section 94316.5.

(2) The information described in paragraph (2) of subdivision (a) of Section 94316.10.

(3) A statement that the information is documented as provided in subdivision (c) of Section 94316.5 and subdivision (b) of Section 94316.10.

(4) Financial information demonstrating compliance with subdivisions (b), (c), (d), (e), and (f) of Section 94316.6.

(5) Any additional information that the superintendent may prescribe.

(b) The superintendent shall maintain each report for 10 years and shall provide copies of the reports to any person upon request.

(c) Based on the review of the information submitted pursuant to this section, the superintendent may initiate a compliance review, may take action including placing the institution on probation as provided in Section 94319.10, or may require evidence of compliance with this article in a form satisfactory to the superintendent.

94316.15. (a) An institution shall notify the superintendent in writing at least 30 days before the institution (1) increases the

amount of any salary, dividend, distribution, or cash draw paid to any person in a calendar year by twenty thousand dollars ($20,000) or more than the amount paid to that person during the prior calendar year, (2) pays one or more salary advances to any person in an aggregate amount of twenty thousand dollars ($20,000) or more, or (3) makes or guarantees loans to any person in an aggregate amount of ten thousand dollars ($10,000) or more. The notice shall contain the amount to be paid, the amount paid during the calendar year, and the name of the recipient.

(b) If the superintendent determines that the proposed payment, loan, or loan guarantee would cause the institution to violate the financial and fiduciary standards required under this chapter, the superintendent shall so notify the institution. The superintendent shall take appropriate action to prevent any proposed violation of this chapter.

(c) The superintendent shall not disclose the notice filed pursuant to subdivision (a) to any person except in an administrative or judicial proceeding or as required by any law or by subpoena or court order.

94316 16. Except as provided in Section 94319.5, an institution shall not disclose the records maintained pursuant to subdivision (c) of Section 94316.5 and subdivision (b) of Section 94316.10 unless production of those records are required by any law or by subpoena or court order.

94316.18 Every institution shall designate an agent for service of process within this state and provide the name, address, and telephone number of the agent to the superintendent. The superintendent shall furnish the agent's name, address, and telephone number to any person upon request.

94316.20. (a) When a person executes an agreement obligating that person to pay any money to an institution for a course of instruction or related materials, the institution shall provide the person with a document containing only the following notice.

"NOTICE OF STUDENT RIGHTS (12-point bold type)

"1. You may cancel your contract for school, without any penalty or obligation as described in the Notice of Cancellation form that will be given to you at (insert 'the first class you go to' or 'with the first lesson in a home study or correspondence course,' whichever is applicable).

Read the Notice of Cancellation form for an explanation of your cancellation rights and responsiblities If you have lost your Notice of Cancellation form, ask the school for a sample copy.

"2. You have the right to stop school at any time and receive a refund for the part of the course not taken. Your refund rights are described in the contract If you have lost your contract, ask the school for a description of the refund policy

"3. If the school closes before you graduate, you may be entitled

to a refund. Contact the

(insert Superintendent of Public Instruction or name of successor agency, whichever applies)"

at the address and telephone number printed below for information.

"4. If you have any complaints, questions, or problems which you cannot work out with the school, write or call:

(insert name, address, and telephone number of Superintendent of Public Instruction or of successor agency, whichever applies)"

(b) Except as otherwise provided in subdivision (a), the notice required by subdivision (a) shall be printed in 10-point type in English and, if any solicitation or negotiation leading to the agreement for a course of instruction was in a language other than English, in that other language.

(c) A copy of the notice, in each language in which the notice was printed pursuant to subdivision (b), shall be posted at all times in a conspicuous place at the main entrance of the institution, in each admissions office, and in each room used for instruction. The superintendent may prescribe the size and format of the posted notice.

(d) Upon request, the institution shall provide a student with a copy of a Notice of Cancellation form, a written description of the student's refund rights, and a copy of the contract executed by the student.

(e) The superintendent may provide for the inclusion of additional information in the notice set forth in subdivision (a).

94316.22 (a) The institution shall submit a copy to the superintendent, at the time of filing, of each return and report of wages required pursuant to Section 1088 of the Unemployment Insurance Code.

(b) (1) The institution shall file biennially with the superintendent, an audit report of financial statements conducted by a licensed certified public accountant in accordance with generally accepted auditing standards The report shall include the financial information required by subdivisions (b) to (f), inclusive, of Section 94319 6 and average monthly expenditures. Work papers for the audit shall be retained for five years from the date of the audit report and shall be made available to the superintendent upon request after the completion of the audit.

(2) If an institution submits an audited financial report meeting the requirements of paragraph (1) to the United States Department of Education and if that report was prepared within six months of the time a report is required to be filed under paragraph (1), the institution may comply with paragraph (1) by submitting a copy of that report to the superintendent.

94316.24. (a) No institution shall pay any consideration to any agent, subject to Section 94333, who has not complied with that

section, or enter into an agreement, as described in Section 94319, with any person who was recruited or solicited to enroll in that institution by an agent who was not in compliance with Section 94333 at the time of the recruitment or solicitation.

(b) No institution shall pay any consideration to any agency, subject to Section 94334, that has not complied with that section, or enter into an agreement, as described in Section 94319, with any person who was recruited or solicited to enroll in that institution by an agency or by an agent employed by or under contract with the agency if the agency was not in compliance with Section 94334 at the time of the recruitment or solicitation.

94316.26 The enrollment, course completion, and employment data used to determine compliance with subdivisions (a) and (b) of Section 94316.5 and paragraph (2) of subdivision (a) of Section 94316.10 shall continue to apply to an institution notwithstanding a change in the institution's ownership, name, or identification number.

94317. (a) In addition to any other right of rescission, the student shall have the right to cancel an agreement for a course of instruction including any equipment or other goods and services included in the agreement, until midnight of the fifth business day after the day on which the student (1) attended the first class of the course of instruction which is the subject of the agreement or (2) received the first lesson in a home study or correspondence course. If the first lesson in a home study or correspondence course is sent to the student by mail, the institution shall send it by first-class mail, postage prepaid, documented by a certificate of mailing, and the student shall have a right to cancel until midnight of the eighth business day after the first lesson was mailed.

(b) Cancellation shall occur when the student gives written notice of cancellation to the institution at the address specified in the agreement

(c) The written notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) The written notice of cancellation need not take a particular form and, however expressed, is effective if it indicates the student's desire not to be bound by the agreement.

(e) Except as provided in subdivision (f), if the student cancels the agreement, the student shall have no liability, and the institution shall refund any consideration paid by the student within 10 days after the institution receives notice of the cancellation.

(f) If the institution gave the student any equipment, the student shall return the equipment within 10 days following the date of the Notice of Cancellation. If the student fails to return the equipment within this 10-day period, the institution may retain that portion of the consideration paid by the student equal to the price of the equipment itemized in the agreement and shall refund the portion of the consideration exceeding the price of the equipment as

provided in subdivision (e). The student may retain the equipment without further liability.

94317.5. (a) The institution shall provide the student with two cancellation forms at the first class attended by the student or with the first lesson in a home study course submitted by the student. The form shall be completed in duplicate, captioned "Notice of Cancellation," and shall contain the following statement:

"Notice of Cancellation

_____
(Date)
[Enter date of first class, date first lesson received, or date first lesson was mailed, whichever is applicable]

"You may cancel this contract for school, without any penalty or obligation, within _____
[insert "five business days" or "eight business days," whichever is applicable]
from the above date.

"If you cancel, any payment you have made and any negotiable instrument signed by you shall be returned to you within 10 days following the school's receipt of your cancellation notice.

"But, if the school gave you any equipment, you must return the equipment within 10 days of the date you signed a cancellation notice. If you do not return the equipment within this 10-day period, the school may keep an amount out of what you paid that equals the price of the equipment written in the contract. The school is required to refund any amount over that as provided above, and you may keep the equipment.

"To cancel the contract for school, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to

_____, at _____.
(name of institution) (address of institution)

"NOT LATER THAN _____
[Enter midnight of the date that is the fifth business day following the day of the first class or the day the first lesson was received or, if the lesson was sent by mail, the eighth business day following the day of mailing, whichever is applicable]

"I cancel the contract for school.

(Date)

(Student's signature)

"REMEMBER, YOU MUST CANCEL IN WRITING. You do not have the right to cancel by just telephoning the school or by not coming to class.

"If you have any complaints, questions, or problems which you cannot work out with the school, write or call:

(insert name, address, and telephone number of Superintendent of Public Instruction or of successor agency, whichever applies)"

94318. (a) Each student of an institution has the right to withdraw from a course of instruction at any time.

(b) If a student withdraws from a course of instruction after the period described in subdivision (a) of Section 94317, the institution shall remit a refund as provided in Section 94318.5 less a registration fee not exceeding seventy-five dollars ($75) within 10 days following the student's withdrawal.

(c) If any portion of the tuition was paid from the proceeds of a loan, the refund shall be sent to the lender or, if appropriate, to the state or federal agency that guaranteed or reinsured the loan. Any amount of the refund in excess of the unpaid balance of the loan shall be first used to repay any student financial aid programs from which the student received benefits, in proportion to the amount of the benefits received, and any remaining amount shall be paid to the student.

(d) Within 10 days of the day on which the refund is made, the institution shall notify the student in writing of the date on which the refund was made, the amount of the refund, the method of calculating the refund, and the name and address of the entity to which the refund was sent. The following statement shall be placed at the top of the notice in a least 10-point bold face type: "This Notice Is Important. Keep It For Your Records."

94318.5. (a) Except as provided in subdivision (d), (e), or (f), the refund shall be the total price specified in the agreement multiplied by a fraction determined pursuant to subdivisions (b) and (c).

(b) The numerator of the fraction shall be (1) the number of classes or hours remaining in a course with a fixed class schedule after the student's withdrawal, (2) the number of classes or hours remaining in a course without a fixed class schedule after the student's withdrawal, or (3) the number of lessons remaining in a

home study or correspondence course after the student's withdrawal, whichever is applicable.

(c) The denominator of the fraction shall be the total number of classes or hours in a course with a fixed class schedule, the total number of classes or hours necessary to complete a class without a fixed class schedule, or the total number of lessons in a home study or correspondence course, whichever is applicable.

(d) If the institution specifies in the agreement for a course of instruction a separate charge for equipment which the student actually obtains and the student fails to return that equipment in good condition, allowing for reasonable wear and tear, within 10 days following the date of the student's withdrawal, the institution may offset against the refund calculated under subdivision (a) the amount specified in the agreement for equipment. The student shall be liable for the amount, if any, by which the amount for equipment exceeds the refund amount calculated under subdivision (a).

(e) If the institution specifies in the agreement for a course of instruction a separate charge for equipment which the student has not obtained at the time of the student's withdrawal, the refund shall be calculated by multiplying the fraction described in subdivisions (b) and (c) by an amount equal to the total price less the charge specified in the agreement for the equipment.

(f) If the total price specified in an agreement for a home study or correspondence course includes a portion for resident instruction which the student has not begun at the time of the student's withdrawal, the refund shall be calculated by multiplying the fraction described in subdivisions (b) and (c) by an amount equal to the total price less the charge specified in the agreement for the resident instruction or, if no charge is specified, the greater of the value which the institution represented the resident portion to be worth or the amount of the total price allocable to the portion for resident instruction.

(g) For the purpose of determining a refund under this section, a student shall be deemed to have withdrawn from a course of instruction when any of the following occur:

(1) The student notifies the institution of the student's withdrawal or of the date of the student's withdrawal, whichever is later.

(2) The institution terminates the student's enrollment as provided in the agreement.

(3) The student has failed to attend classes for a three-week period. For the purpose of this paragraph, the date of the student's withdrawal shall be deemed the last date of recorded attendance.

(4) The student has failed to submit three consecutive completed lessons or has failed to submit a completed lesson within 60 days of its due date as required in a home study or correspondence course. For the purpose of this paragraph, the date of the student's withdrawal shall be deemed to be the date on which the student submitted the last completed lesson.

(h) An institution shall have the burden of proof to establish the

number of classes or hours remaining in a class without a fixed class schedule after a student's withdrawal, and the amount of the total price of a home study or correspondence course allocable to the portion for resident instruction. The institution shall maintain records for five years of all the evidence on which the institution relies.

94319 (a) No institution shall offer any course of instruction to any person, or receive any consideration from any person for a course of instruction, except pursuant to a written agreement as described in this section. Every agreement for a course of instruction shall provide the following:

(1) A general description of the course of instruction and any equipment to be provided.

(2) The total number of classes, hours, or lessons required to complete the course of instruction.

(3) The total amount which the student is obligated to pay including all fees, charges, and expenses separately itemized that must be paid to complete the course of instruction. The total amount shall be underlined and shall appear immediately above the following notice, which shall be printed above the space on the agreement that is reserved for the student's signature:

"YOU ARE RESPONSIBLE FOR THIS AMOUNT. IF YOU GET A STUDENT LOAN, YOU ARE RESPONSIBLE FOR REPAYING THE LOAN AMOUNT PLUS ANY INTEREST."

(4) The total amount charged for each item of equipment shall be separately stated. The amount charged for each item of equipment shall not exceed the equipment's fair market value. The institution shall have the burden of proof to establish the equipment's fair market value.

(5) A schedule of payments.

(6) The student's right to withdraw from the course of instruction and obtain a refund and an explanation of refund rights and of how the amount of the refund will be determined including a hypothetical example.

(7) A detailed explanation of the student's right to cancel the agreement as provided in Section 94317.

(8) The following statement printed in 12-point boldface type on the first page of the agreement:

"If you have any complaints, questions, or problems which you cannot work out with the school, write or call:

(insert name, address, and telephone number of Superintendent of Public Instruction or of successor agency, whichever applies)"

(b) Unless otherwise provided in subdivision (a), the institution shall provide the information required under Sections 94316.10, 94317, 94317.5, and subdivision (a) of this section in at least 10-point type in English and, if any solicitation or negotiation leading to the agreement for a course of instruction was in a language other than English, in that other language.

94319.2. (a) An institution shall not enter into an agreement for a course of instruction with a student unless the institution first administers to the student and the student passes a test that establishes the student's ability to benefit from the course of instruction

(b) (1) No later than March 1, 1990, the superintendent shall publish a list of tests and their respective passing scores, time limits, and testing rules, which shall be used by institutions, on and after that date, to test a student's ability to benefit from a course of instruction. The superintendent shall indicate whether a particular test is generally applicable or, instead. is to be used only for one or more specific courses of instruction. From April 1, 1990, to June 30, 1991, inclusive, all institutions shall use one or more of the appropriate tests on that list in order to comply with subdivision (a). No later than July 1, 1990, the superintendent shall adopt the procedure that he or she will use in approving tests, the respective passing scores for those tests, testing time limits, and testing rules for purposes of paragraph (2).

(2) Subject to subdivision (c), the superintendent shall approve, no later than July 1, 1991, each test and the passing score for that test to be used to establish the student's ability to benefit from each course of instruction for which that test will be used, as well as testing time limits and testing rules. On and after July 1, 1991, in order to comply with subdivision (a), each institution shall use only the tests, the respective passing scores for those tests, testing time limits, and testing rules approved by the superintendent pursuant to this paragraph, as may be subsequently modified by the superintendent.

(3) The superintendent may approve nationally recognized standardized tests for use in testing a student's ability to benefit from a particular course of instruction.

(c) The institution shall have the burden of establishing to the superintendent's reasonable satisfaction that the test is a reliable and valid indicator of a student's ability to benefit from the course of instruction when administered in accordance with the test's instructions, rules, and time limits, that the minimum passing score is appropriate, and that the institution administers the test in accordance with the test's instructions, rules, and time limits.

(d) The superintendent shall not approve any test unless the superintendent concludes that sufficient data derived from reliable and valid studies and evaluations reasonably establish that the test is a reliable and valid indicator of a student's ability to benefit from the course of instruction.

(e) The test shall be completed solely by the student. No institution or any person in any manner associated with the institution shall (1) answer any of the test questions, or (2) provide any assistance whatsoever to the student in answering test questions. If a prospective student has failed a test, no institution shall administer another test to that prospective student for at least 60 days. Any subsequent test administered by an institution to the same

prospective student shall be substantially different than the preceding test and shall be approved by the superintendent as provided in this section.

94319.4. (a) If a course of instruction is based on a sequence of classes or lessons and the learning experience to be derived from any class or lesson within the sequence is based in any manner on a student's attendance at or completion of a prior class or lesson, an institution shall not enroll a student in that course of instruction unless the instruction begins with the first class or lesson and proceeds in the appropriate sequence.

(b) (1) If a course of instruction is based on a series of modules of classes or lessons and the learning experience to be derived from any module is based on a student's attendance at or completion of any classes or lessons in any other module, an institution shall not enroll a student in that course of instruction unless the instruction begins and proceeds in the appropriate sequence.

(2) If a course of instruction is based on a series of modules of classes or lessons and the learning experience to be derived from any module is not based on a student's attendance at or completion of any classes or lessons in any other module, an institution shall only enroll a student if the course of instruction begins with the first class or lesson in a module.

(c) The superintendent, at any time, may determine whether the learning experience to be derived from any class or lesson in a sequence of classes or lessons or from any module is based in any manner on a student's attendance at, or completion of, a prior class or lesson in the sequence or any class or lessons in any other module. The superintendent may make the determination described in this subdivision upon the application of any person or when the superintendent deems that a determination is appropriate. The institution shall have the burden to establish compliance with this section.

(d) The institution shall not merge classes unless all of the students have received the same amount of instruction and training.

(e) After a student has enrolled in a course of instruction, the institution shall not do any of the following:

(1) Make any unscheduled suspension of any class.

(2) Change the day or time in which any class is offered unless at least 90 percent of the students who are enrolled consent to the change and the institution offers full refunds to the students who do not consent to the change. This subdivision does not apply to a change in the day or time of individual class sessions if there are no more than three changes in a six-month period or if all of the students agree to the change.

(f) If an institution enrolls a student in a course of instruction that is not offered or designed as a home study or correspondence course at the time of enrollment, the institution shall not convert the course of instruction from classroom instruction to a home study or correspondence course.

(g) An institution shall not move the class instruction to a location more than one mile from the location of instruction at the time of enrollment unless the institution offers a full refund to students enrolled in the class.

94319.5. (a) Every institution shall maintain for a period of not less than five years at its principal place of business in California accurate records that show all of the following:

(1) The names, telephone numbers, and home and local addresses of each student.

(2) The courses of instruction offered by the institution and the curriculum for each course

(3) The name, address, and educational qualifications of each member of its faculty.

(4) The information required by subdivision (c) of Section 94316.5 and subdivision (b) of Section 94316.10.

(5) All information required by the superintendent.

(b) All records maintained by an institution shall be made immediately available for inspection and copying during normal business hours by the superintendent, the Attorney General, any district attorney or city attorney, and the Student Aid Commission.

(c) An institution shall make available to a student, or a person designated by the student, all of the student's records, except for transcripts of grades where the student is in default on one or more loans as provided in subdivision (b) of Section 94343.6.

(d) Each institution shall be deemed to have authorized the accrediting agency which accredited the institution to provide to the superintendent, the Attorney General, any district attorney or city attorney, or the Student Aid Commission, within 30 days of written notice, copies of all documents and other material concerning the institution that is maintained by the accrediting agency.

(e) Within 30 days of receiving written notice from the superintendent, the Attorney General, any district attorney or city attorney, or the Student Aid Commission, an accrediting agency shall provide the requesting official with all documents or other material concerning an institution accredited by that accrediting agency that are designated specifically or by category in the written notice.

(f) If the superintendent, the Attorney General, any district attorney or city attorney, or the Student Aid Commission is conducting a confidential investigation of an institution and so informs the accrediting agency, the accrediting agency shall not inform that institution of the investigation.

(g) If an accrediting agency willfully fails to comply with this section, the accrediting agency shall be liable for a civil penalty of not less than two thousand five hundred dollars ($2,500) nor more than twenty-five thousand dollars ($25,000) for each violation. Penalties awarded pursuant to this section shall be deposited in the Private Postsecondary Education Administration Fund or any successor fund

94319.6. (a) The institution shall provide sufficient instruction

and materials pursuant to a planned curriculum appropriate to the student's educational program and establish sufficient student attendance, progress, and performance standards to reasonably assure that students acquire the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the course of instruction is represented to lead

(b) The institution shall provide each student with sufficient materials, including current publications and equipment, no later than the time the materials are appropriate for use in the course of instruction

(c) If a student has begun a course of instruction and any portion of the student's tuition is to be paid from the proceeds of a loan or grant, the institution shall not withhold any instruction, equipment, or materials from the student pending approval of the loan or grant or the disbursement of any portion of the proceeds of the loan or grant.

94319.7. (a) This chapter shall not apply to individual flight instructors not requiring any advance payments, who do not negotiate a formal contract of indebtedness, and who do not have an established place of business other than their residences.

(b) Institutions certified to offer flight instruction by the Federal Aviation Administration, or its successor agency, are not required to file any materials with the superintendent which are not required by the certifying federal agency except those that the superintendent determines are minimally necessary to administer the Student Tuition Recovery Fund pursuant to Section 94342.

94319.8. No student may waive any provision of this article. Any waiver or limitation of any substantive or procedural right or remedy is in violation of this section and is void and unenforceable.

94319.9. (a) If an institution violates this article in connection with an agreement for a course of instruction, that agreement shall be unenforceable, and the institution shall refund all consideration paid by or on behalf of the student.

(b) Notwithstanding any provision in an agreement, a student may bring an action for a violation of this article or an institution's failure to perform its legal obligations and, upon prevailing, shall be entitled to the recovery of damages, equitable relief, any other relief authorized by this article, and reasonable attorney's fees and costs.

(c) If a court finds that a violation was willfully committed or that the institution failed to refund all consideration as required by subdivision (a) on the student's written demand, the court shall, in addition to the relief awarded under subdivision (b), award a civil penalty of up to two times the amount of the damages sustained by the student.

(d) The remedies provided in this article supplement but do not supplant the remedies provided under other provisions of law

(e) An action brought under this section shall be commenced within three years of the discovery of the facts constituting grounds

for commencing the action.

(f) Any provision in any agreement which purports to require a student to invoke any grievance dispute procedure established by the institution or any other procedure before bringing an action to enforce any right or remedy is void and unenforceable.

(g) A student may assign his or her causes of action for a violation of this article to the superintendent, or to any state or federal agency that guaranteed or reinsured a loan for the student or provided any grant or other financial aid.

(h) The section applies to any action pending on the effective date of this section.

94319.10. (a) An institution is legally authorized to offer courses of instruction if the institution complies with this article and has received approval from the superintendent. No institution shall offer any course of instruction if the institution's approval to offer that course of instruction has been suspended or revoked.

(b) The superintendent may suspend or revoke an institution's approval to operate a branch or satellite campus because of any violation of this article.

(c) (1) If, at any time, the superintendent determines that an institution is in violation of this article but that the institution's approval to operate should not be suspended or revoked, the superintendent may place the institution on probation for a specified period of time not to exceed one year.

(2) During the period of probation, the institution shall be subject to monitoring that may include the required submission of periodic reports, as prescribed by the superintendent, and special onsite inspections to determine progress toward compliance.

(3) If, as of the end of the period of probation, the superintendent is not satisfied with the steps taken by the institution to eliminate the violations of this article upon which the probation was based, the superintendent may revoke the institution's approval to operate.

(4) The superintendent may assess a penalty of up to ten thousand dollars ($10,000) as part of an order placing an institution on probation for violations of this article. In determining the amount of that penalty, the superintendent shall consider the number and gravity of the violations, the degree of the institution's good faith or culpability, the history of the institution's previous violations, and the institution's ability to pay. If the institution fails to pay a penalty within 30 days after the effective date of the superintendent's decision, the institution's approval to operate shall be automatically suspended.

(d) The superintendent shall determine an institution's compliance with this article without regard to the findings or conclusions of any accrediting agency.

(e) Proceedings by the superintendent under this section 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 superintendent shall have all of the powers granted therein.

94319.11. The suspension or revocation of an institution's approval to operate may also be embraced in any action otherwise proper in any court involving the institution's compliance with this chapter or performance of its legal obligations.

94319.12. (a) If the superintendent has evidence that an institution has violated this article and determines that immediate action is necessary to protect students, prevent misrepresentations to the public, or prevent the loss of public funds or tuition and other money paid by students, the superintendent may institute an emergency action to suspend, for not more than 60 days, the approval of an institution to operate.

(b) The superintendent shall provide notice of the emergency action to the institution by certified mail or personal service. The notice shall specify the alleged violations on which the emergency action is based, the effective date of the action, and the right of the institution to request a hearing within 30 days of the service of the notice. If a hearing is requested, the superintendent shall set a date within 20 days after receipt of the request.

(c) The superintendent may terminate the emergency action at any time if the superintendent concludes that the grounds for instituting the emergency action no longer remain.

(d) If the institution does not request a hearing within the time specified in subdivision (b) or if the superintendent concludes after a hearing that grounds exist for the suspension or revocation of the institution's approval to operate, the superintendent may permanently suspend or revoke the institution's approval to operate, may order probation and a penalty, or may condition the institution's approval to operate as the superintendent deems appropriate.

(e) During the pendency of an emergency action, the superintendent may investigate the institution's compliance with this article and may institute a proceeding pursuant to Section 94319.10 to suspend or revoke an institution's approval to operate, or order probation and a penalty, based on any violation of this article.

(f) This section supplements but does not supplant the authority of the superintendent to seek judicial relief, including a temporary restraining order and injunction, to redress any violation of this article.

94319.13. This article, except for subdivisions (a), (h), and (i) of Section 94316.6 and Sections 94316.8, 94319.2, 94319.4, 94319.10, 94319.11, and 94319.12, applies to schools that offer instruction in how to prepare for, take, and pass civil service examinations or other tests qualifying a student for employment by a governmental entity. For the purpose of determining compliance with this article, schools described in this section shall be considered "institutions."

94319.14. (a) Notwithstanding Section 94336, any person or business entity, regardless of the form of organization, that willfully violates this article or Section 94320 or 94321 is guilty of a crime and is subject to separate punishment for each violation either by (1) imprisonment in the state prison, by a fine not exceeding fifty

thousand dollars ($50,000), or by both the fine and imprisonment or (2) imprisonment in the county jail for not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(b) Notwithstanding any other law, any prosecution under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the prosecution.

(c) The penalties provided by this section supplement, but do not supplant, the remedies and penalties provided under other law

94319.16. The superintendent may adopt and enforce regulations as may be necessary, appropriate, or useful to interpret and otherwise implement this article. Pending the adoption of formal regulations, the superintendent may adopt temporary regulations, which shall be immediately effective, notwithstanding any other provision of law, and which shall be superseded upon the adoption of formal regulations.

94319.18. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the article that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

SEC. 5. Section 94331 of the Education Code is amended to read:

94331 The superintendent shall establish and maintain a Private Postsecondary Education Administration Fund. All fees collected pursuant to this section shall be credited to this fund, along with any interest on the money, for administration of the provisions of this chapter. The money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years. However, if the Legislature makes an appropriation for the support of the Office of Private Postsecondary Education in the Budget Act of any fiscal year, the amount for support of the Office of Postsecondary Education expended from the Private Postsecondary Education Administration Fund during that fiscal year shall not exceed the amount appropriated by the Budget Act.

For the approval or authorization of private institutions operating under this chapter, including the licensure of institutions operating pursuant to paragraph (2) of subdivision (a) of Section 94310, the superintendent shall charge an amount not exceeding the actual costs of approving or authorizing the private institutions. However, in no case shall these fees exceed the fee schedule in this section, except that these maximum amounts may be increased by a percentage that reflects an increase in the Consumer Price Index, all items of the Bureau of Labor Statistics of the United States Department of Labor, measured for the calendar year preceding the fiscal year to which it applies. If the actual costs incurred exceed the proceeds of the maximum amount so computed, the superintendent may further increase the maximum fee up to the amount of the actual costs incurred, with the approval of the council. The superintendent shall annually publish a schedule of the current fees

to be charged pursuant to this section and shall make this schedule generally available to the public.

It is the intent of the Legislature that the fees charged to private institutions covered by the provisions of this chapter may also be increased to the level necessary to provide adequate resources to complete a thorough review of private postsecondary educational institutions by the state. The Superintendent of Public Instruction shall report to the Legislature the need for any increases in fees to assure that the superintendent has adequate resources to fulfill the Legislature's intent.

The following fee schedule shall govern the fees to be paid by private institutions operating under this chapter:

(a) For approval to issue specified degrees pursuant to subdivision (b) of Section 94310:

(1) Fifteen hundred dollars ($1,500) for an institution's original application.

(2) Five hundred dollars ($500) for an institution's annual renewal.

(3) Two hundred dollars ($200) for an institution's change of ownership.

(4) One hundred fifty dollars ($150) for an institution's change of location.

(5) Five hundred dollars ($500) for an institution's additional degree title.

(b) For authorization to issue degrees pursuant to subdivision (c) or (d) of Section 94310:

(1) One thousand five hundred dollars ($1,500) for an institution's original application.

(2) Five hundred dollars ($500) for an institution's annual renewal.

(3) Two hundred dollars ($200) for an institution's change of ownership.

(c) For approval to operate pursuant to Section 94311:

(1) (A) One thousand dollars ($1,000) for a new institution.

(B) Five hundred dollars ($500) for a new institution of an administrative family.

(C) Two hundred dollars ($200) for a new institution of a nonprofit public benefit corporation, organized pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, if such education is limited to instruction in employment and skill training and if it is offered at no charge to those persons receiving such education.

(2) (A) One thousand two hundred dollars ($1,200) for an institution's annual renewal if the institution does not participate in publicly funded or guaranteed student financial assistance programs and enrolls more than 150 students each year. Six hundred dollars ($600) for an institution's annual renewal if the institution does not participate in publicly funded or guaranteed student financial assistance programs and enrolls 150 or fewer students each year. Two

thousand five hundred dollars ($2,500) for an institution's annual renewal if the institution participates in publicly funded or guaranteed student financial assistance programs and enrolls more than 150 students each year. One thousand six hundred dollars ($1,600) for an institution's annual renewal if the institution participates in publicly funded or guaranteed student assistance programs and enrolls 150 or fewer students each year.

(B) One hundred dollars ($100) for an annual renewal of an institution described in subparagraph (C) of paragraph (1) of subdivision (d).

(3) One thousand dollars ($1,000) for an institution's change of ownership

(4) Two hundred fifty dollars ($250) for an institution's change of location.

(5) One hundred dollars ($100) for an institution's additional course.

(d) For an annual filing by an ownership to offer career-related education pursuant to Section 94315: two hundred dollars ($200).

(e) For purposes of this section, "administrative family" refers to two or more institutions under common ownership, and the ownership maintains centralized administration, records, and reporting at one California location, and has at least a five-year history of private postsecondary education operations in California.

(f) For evaluation of an applicant for a certificate of authorization for service, issued pursuant to paragraph (3) of subdivision (d) of Section 94311, the original and renewal applications for a three-year authorization shall be accompanied by a twenty-five dollar ($25) fee.

(g) For a private school agent's permit pursuant to Section 94333: twenty-five dollars ($25) annually per applicant.

(h) For agencies with three or fewer employees:

(1) Seven hundred fifty dollars ($750) for an original application.

(2) Five hundred dollars ($500) for the agency's annual renewal.

(3) Five hundred dollars ($500) for the agency's change of ownership.

(i) For agencies with four or more employees:

(1) One thousand five hundred dollars ($1,500) for an original application.

(2) One thousand dollars ($1,000) for the agency's annual renewal.

(3) One thousand dollars ($1,000) for the agency's change of ownership.

(j) This section shall not apply to any agency recruiting solely for institutions described in Section 94310.1.

SEC. 6. Section 94333 of the Education Code is amended to read:

94333. (a) Notwithstanding any other provision of this chapter concerning agents, the owner of at least 51 percent of the equitable interest in an institution shall be exempt from this section by virtue of having filed for a permit to operate under Section 94310 or 94311.

No person may act as an agent, as defined by subdivision (m),

unless that person holds a valid permit issued by the superintendent. Administrators or faculty, or both, who make informational public appearances, but whose primary task is not to serve as a paid recruiter, are exempted from this section.

The application for a permit shall be furnished by the superintendent and shall include the following:

(1) A statement signed by the applicant that he or she has read the provisions of this chapter and the rules and regulations promulgated pursuant thereto.

(2) A surety bond issued by an admitted surety insurer making provision for indemnification of any person for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of this chapter. The term of the bond shall extend over the period of the permit. The bond may be supplied by the institution or by the person for whom the issuance of the permit is sought and may extend to cover individuals separately or to provide blanket coverage for all persons to be engaged as representatives of the institution. The bond shall provide for liability in the penal sum of twenty-five thousand dollars ($25,000) for each agent to whom coverage is extended by its terms. Neither the principal nor surety on a bond may terminate the coverage of the bond except upon giving 30 days' prior written notice to the superintendent.

(3) A fee as required by Section 94331.

(b) An agent representing more than one institution must obtain a separate agent's permit and bond for each institution represented.

(c) No person shall be issued a permit except upon the submission of satisfactory evidence of good moral character. No person shall be issued a permit if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter, or if there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

(d) A permit shall be valid for the calendar year in which it is issued, unless sooner revoked or suspended by the superintendent for fraud or misrepresentation in connection with the solicitation for the sale of any course of study, for any violation of this chapter or for the existence of any condition in respect to the permittee or the school he or she represents which, if in existence at the time the permit was issued, would have been grounds for denial of the permit.

(e) The permittee shall carry the permit with him or her for identification purposes when engaged in the solicitation of sales and the selling of courses of study away from the premises of the school, and shall produce the permit for inspection upon the request of any person.

(f) Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall be applicable to any determination of the superintendent made pursuant to this section.

(g) The issuance of a permit pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding a permit to expressly or impliedly represent by any means whatever, that the superintendent has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the individual.

(h) It shall be unlawful for any individual holding a permit under this section to expressly or impliedly represent, by any means whatever, that the issuance of the permit constitutes an assurance by the superintendent that any correspondence course of study being offered for sale by the individual will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective, or will result in employment or personal earnings for the student

(i) No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair.

(j) The superintendent shall maintain records for five years of each application for a permit, each bond, and each issuance, denial, termination, suspension, and revocation of a temporary permit or permit.

(k) A student may bring an action for an agent's violation of this chapter or any fraud or misrepresentation and, upon prevailing, shall be entitled to the recovery of damages, reasonable attorney's fees, and costs. If a court finds that the violation was willfully committed, the court shall, in addition to the award of damages, award a civil penalty of up to two times the amount of damages sustained by the student

(*l*) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the imprisonment and the fine.

(m) For the purposes of this section, "agent" means any person who, at a place away from the institution's premises or site of instruction, for consideration, solicits, promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to an institution either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in an institution. Administrators or faculty, or both, who make informational public appearances, but whose primary task is not to serve as a paid recruiter, are exempted from this definition.

SEC. 7. Section 94334 of the Education Code is amended to read:

94334. (a) Except as otherwise specified in subdivision (g), any agency, as defined by subdivision (*l*), shall be required to hold a valid authorization issued by the superintendent. The application for an authorization shall include all of the following:

(1) A current audited financial statement prepared by a certified public accountant.

(2) Evidence of a surety bond issued by an admitted surety

insurer making provision for indemnification of any person for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of this chapter. The term of the bond shall extend over the period of the authorization. The bond shall provide for liability in the penal sum of two hundred fifty thousand dollars ($250,000) for each agency to which coverage is extended by its terms. Neither the principal nor surety on a bond may terminate the coverage of the bond except upon giving 30 days' prior written notice to the superintendent.

(3) A copy of the student disclosure statement to be read and signed by all prospective students referred to institutions by an agency. The student disclosure statement shall include, but not be limited to, all of the following:

(A) A statement to the effect that no promise of employment has been made by the agency.

(B) A statement to the effect that repayment of any debt incurred by a student in connection with his or her education will be the sole responsibility of the student.

(C) The amount and terms of any fee to be paid by the student to the agency.

(D) A verbatim statement, as follows:

"Any questions or problems concerning this agency should be directed to the Superintendent of Public Instruction, State Department of Education, Sacramento, California 94244-2720."

(E) A statement to the effect that the institution or institutions to which the prospective student is referred by the agency has the obligation to make available to the student a catalog or brochure containing information describing all of the following:

(i) The courses offered.

(ii) Program objectives.

(iii) Length of program.

(iv) The faculty and their qualifications

(v) Schedule of tuition, fees, and all other charges and expenses necessary for the completion of the course of study.

(vi) Cancellation and refund policies.

(vii) Total cost of tuition over the period needed to complete the student's education.

(viii) For vocational training programs placement data, including program completion rates, placement rates, and starting salaries.

(ix) Other material facts concerning the institution and the program or course of instruction that are reasonably likely to affect the decision of the student to enroll in the institution

(4) Identification of all employees of the agency and their titles, and of all agents with whom the agency contracts.

(5) Identification of all owners and if the entity is a corporation the identification of all persons possessing an interest equal to, or in excess of, 10 percent.

(6) Identification of all vendors of educational services for which the agency provides recruitment services

(7) A signed statement by the applicant that all employees engaged in recruitment activities will be required to read Section 94320.

(b) Within 15 days of receipt of a completed application and prior to issuance of an authorization a representative of the superintendent shall inspect the applicant agency and verify the application. Within 30 days of the inspection the superintendent shall issue the authorization for a one-year period, subject to annual renewal at the end of that period, or deny the application. The superintendent shall deny the authorization if the agency or any owner, officer, or director of the agency has been previously found in any judicial or administrative proceeding to have violated this chapter or if there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

(c) Any employee of an authorized agency engaged in student recruitment activities of an authorized agency is exempt from the bond requirements of Section 94333

(d) Neither the agency nor any of its employees shall make any untrue or misleading statement in the course of any solicitation or recruitment activity or engage in the sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair

(e) An agency or an employee of an agency shall provide a prospective student with the disclosure statement described in paragraph (3) of subdivision (a) and allow the prospective student a sufficient opportunity to read it before soliciting or recruiting the prospective student for enrollment or referring the prospective student to an institution. That disclosure statement shall be printed in 10-point type in English and, if the solicitation, recruitment, or referral is to be conducted in a language other than English, in that other language. This subdivision does not apply if the agency or the agency's employee complies with Section 94316.3.

(f) Any institution approved under this chapter shall cease any and all recruitment activities involving the agency upon action by the superintendent to revoke or deny an agency authorization. Failure of the institution to do so upon presentation of notice of the superintendent's action shall be cause to deny or revoke any approval held by that institution.

(g) Any agency engaged in recruiting activities on January 1, 1989, may continue its recruiting activities but shall make an application to the superintendent as required by this section within 30 days of the application becoming available and the superintendent, within 30 days of the receipt of the application, shall issue the authorization for a one-year period or deny authorization Thereafter, the agency shall possess a current authorization in order to continue to operate

(h) This section shall not apply to any agency recruiting solely for institutions described in Section 94310 1

(i) The superintendent shall maintain records for five years of

each application for an authorization, each verification by the superintendent of an application, each bond, and each denial, issuance, and revocation of an authorization.

(j) A student may bring an action against an agency if the agency or an employee of the agency violates this chapter or commits any fraud or misrepresentation and, upon prevailing, shall be entitled to the recovery of damages, reasonable attorney's fees, and costs. If a court finds that the violation was willfully committed, the court shall, in addition to the award of damages, award a civil penalty of up to two times the amount of damages sustained by the student.

(k) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the imprisonment and the fine.

(*l*) For the purposes of this section, "agency" means any person or business entity, regardless of the form of organization, that employs or in any manner contracts with one or more agents as defined in subdivision (m) of Section 94333. "Agency" does not include an institution

SEC. 8. Section 94339 of the Education Code is amended to read.

94339. (a) The Attorney General, or any district attorney or city attorney:

(1) May make investigations as may be necessary to carry out the provisions of this chapter, including, but not limited to, investigations of complaints.

(2) And the superintendent may, jointly, bring actions as may be necessary to enforce the provisions of this chapter, including, but not limited to, civil actions for injunctive relief. In actions brought pursuant to this paragraph, the superintendent shall be represented by the Attorney General.

(b) The Attorney General shall represent the superintendent in any administrative proceedings arising under this chapter.

(c) Nothing in this section or this chapter shall be deemed to preclude the Attorney General, or any district attorney or city attorney, from:

(1) Bringing any actions on behalf of the people as he is empowered by law to bring, including, but not limited to, actions based upon alleged violations of Chapter 5 (commencing with Section 17200) of Part 2, and Chapter 1 (commencing with Section 17500) of Part 3, of Division 7 of the Business and Professions Code.

(2) Conducting investigations as may be necessary to determine whether there have been violations of the provisions of law specified in paragraph (1) of this subdivision.

(3) Conducting any investigations that he or she is authorized by law to conduct including, but not limited to, investigations authorized pursuant to Section 11180 of the Government Code.

SEC. 9 Section 94342 of the Education Code is amended to read:

94342. (a) The superintendent shall establish and maintain a Student Tuition Recovery Fund for the purpose of relieving or

mitigating pecuniary losses suffered by any California student of an approved institution and who meets either of the following conditions:

(1) The student was enrolled in an institution prior to the institution's closure, prepaid tuition, and suffered loss as the result of (A) the closure of the institution, (B) the institution's breach or anticipatory breach of the agreement for the course of instruction, or (C) a decline in the quality or value of the course of instruction within the 30-day period before the institution's closure, or, if the decline began before that period, the period of decline as determined by the superintendent.

(2) The student obtained a judgment against the institution for any violation of this chapter and the student certifies that the judgment cannot be collected after diligent collection efforts.

(b) The superintendent shall attempt to obtain the names and addresses of people who were students of an institution within 60 days before its closure and notify these students of their rights under the Student Tuition Recovery Fund and how to apply for payment.

(c) (1) Students entitled to payment as provided in paragraph (1) of subdivision (a) shall file with the superintendent a verified application indicating (A) the student's name, address, telephone number, and social security number, (B) if any portion of the tuition was paid from the proceeds of a loan, the name of the lender and any state or federal agency that guaranteed or reinsured the loan, (C) the amount of the prepaid tuition, (D) the date the student ceased attending the institution, (E) a description of the reasons the student ceased attending the institution, and (F) if the student ceased attending because of a breach or anticipatory breach or because of the decline in the quality or value of the course of instruction as described in subparagraph (C) of paragraph (1) of subdivision (a), a statement describing in detail the nature of the economic loss incurred. The application shall be filed within one year of the superintendent's service on the student of the notice described in subdivision (b) or, if no notice is served, within four years of the institution's closure.

(2) Students entitled to payment as provided in paragraph (2) of subdivision (a) shall file with the superintendent a verified application indicating the student's name, address, telephone number, and social security number, the amount of the judgment obtained against the institution, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a copy of the judgment and any other documents indicating the student's efforts made to enforce the judgment. The application shall be filed within two years after the date upon which the judgment became final.

(3) The superintendent may require additional information designed to facilitate payment to entitled students. The superintendent shall relieve a student from the requirement to

provide all of the information required by this subdivision if the superintendent has the information or the information is not reasonably necessary for a resolution of the student's claim.

(d) Within 60 days of the superintendent's receipt of an application for payment, the superintendent shall pay the claim from the Student Tuition Recovery Fund or deny the claim. The superintendent may, for good cause, extend the time period for up to 90 days to investigate the accuracy of the claim.

(e) If the superintendent pays the claim, the amount of the payment shall be the total amount of the student's economic loss, notwithstanding the amount of the refund to which the student would have been entitled after a voluntary withdrawal, although the amount of the payment shall in no event exceed the amount of the student's tuition and the cost of materials related to the course of instruction. Upon payment of the claim, the superintendent shall be subrogated to all of the student's rights against the institution to the extent of the amount of the payment.

(f) If the superintendent denies the claim, the superintendent shall notify the student of the denial and of the student's right to request a hearing within 60 days or any longer period permitted by the superintendent. If a hearing is not requested within 60 days or any additional period reasonably requested by the student, the superintendent's decision shall be final. If a hearing is requested, the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code apply.

(g) It is the intent of the Legislature that, when a student is enrolled in an institution that closes prior to the completion of the student's program, the students have the option for a teach-out at another institution approved by the superintendent. The superintendent shall seek to promote teach-out opportunities whenever possible, with the student to be informed by the superintendent that he or she has the option of either payment from the fund or a teach-out.

SEC 10 Section 94343 of the Education Code is amended to read:

94343 The superintendent shall assess each institution which collects any moneys in advance of rendering services an amount equal to one-tenth of 1 percent of the total course cost for each student newly enrolled. The assessment per student shall be not less than one dollar ($1), and not more than four dollars ($4). In addition, for each student who prepays an institution an amount in excess of four thousand dollars ($4,000), the superintendent shall assess the institution one-half of 1 percent of the prepaid amount which exceeds four thousand dollars ($4,000). The superintendent shall levy additional reasonable assessments only if required to assure that sufficient funds are available to satisfy the anticipated costs of paying student claims pursuant to Section 94342. The assessments shall be paid into the State Treasury and credited to the Student Tuition Recovery Fund, and the deposits shall be allocated, except as otherwise provided for in this chapter, solely for the payment of valid

claims to students. Unless additional reasonable assessments are required, no assessments shall be levied during any fiscal year if, as of June 30 immediately preceding that fiscal year, the balance in the fund exceeds one million dollars ($1,000,000). However, regardless of the balance in the fund, assessments shall be paid by each newly approved institution. Notwithstanding Section 13340 of the Government Code, the moneys so deposited in the Student Tuition Recovery Fund are continuously appropriated to the State Department of Education for the purpose of paying claims to students pursuant to Section 94342. Not more than one hundred thousand dollars ($100,000) per fiscal year shall be used for the administration of the tuition recovery program authorized by Section 94342 and this section. The interest earned on money in the fund shall be credited to the fund. Except for institutions which offer vocational or job training programs, institutions which are accredited by a regional accrediting association recognized by the United States Department of Education, or which meet the student tuition indemnification requirements of a California state agency, or which demonstrate to the superintendent that an acceptable alternative method of protecting their students against loss of prepaid tuition has been established, shall be exempted from the provisions of this section.

In the event of a closure by any institution approved under this chapter, any assessments which have been made against that institution, but have not been paid into the State Treasury, shall be recovered, and any payments from the Student Tuition Recovery Fund made to students on behalf of that institution may be recovered from that institution, by appropriate action taken by the Superintendent of Public Instruction. The moneys so deposited in the Student Tuition Recovery Fund shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of such institutions or students.

SEC 11. Section 94350 of the Education Code is amended to read:

94350. Except for Article 2.5 (commencing with Section 94316) and Sections 94333, 94334, 94342, and 94343, this chapter shall become inoperative on June 30, 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. 12. (a) If this bill is enacted before January 1, 1990, and SB 190 is not enacted by that date, Sections 1.5 and 3 5 of this bill shall not become operative.

(b) If this bill and SB 190 are both enacted before January 1, 1990, then the following shall occur regardless of the order of enactment:

(1) Sections 1, 3.5, 5, 6, 7, 8, 9, and 10 of this bill shall become operative on January 1, 1990, shall remain in effect until January 1, 1991, and on that date shall be repealed. However, these sections shall continue to apply after January 1, 1991, to (1) any action commenced before January 1, 1991, pursuant to those sections and

pending on or after that date and (2) any approval, conditional approval, or provisional approval granted before January 1, 1991, pursuant to Section 3.5 of this bill.

(2) Section 1.5 of this bill shall become operative on January 1, 1991.

(3) Section 3 of this bill shall not become operative.

(4) Section 4 of this bill shall become operative on January 1, 1990, and shall remain in effect notwithstanding Section 3 of SB 190.

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

CHAPTER 1240

An act to amend Sections 1063.5 and 3553 of, to add Sections 460.7, 1043, 1075, 3711, 5135.5, 5230, 5374.6, and 5378.1 to, and to repeal and add Sections 460.5 and 3554 of, the Public Utilities Code, relating to carriers, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 460.5 of the Public Utilities Code is repealed.

SEC. 1.2. Section 460.5 is added to the Public Utilities Code, to read:

460 5. (a) Beginning July 1, 1990, and continuing thereafter, every highway common carrier and cement carrier shall file with the commission one of the following:

(1) A certificate of workers' compensation coverage for its employees issued by an admitted insurer.

(2) A certification of consent to self-insure issued by the Director of Industrial Relations, and the identity of the administrator of the carrier's workers' compensation self-insurance plan.

(3) A statement under penalty of perjury, stating that, in its operations as a highway common carrier or cement carrier, it does not employ any person in any manner so as to become subject to the workers' compensation laws of this state.

(b) The workers' compensation certified to under paragraph (1)

of subdivision (a) shall be effective until canceled. Cancellation shall require 30 days' advance notice.

(c) If, after filing the statement described in paragraph (3) of subdivision (a), the carrier becomes subject to the workers' compensation laws of this state, the carrier shall promptly notify the commission that the carrier is withdrawing its statement under paragraph (3) of subdivision (a), and shall simultaneously file the certificate described in either paragraph (1) or (2) of subdivision (a).

(d) The commission may adopt rules and regulations that it determines to be necessary to carry out this section.

SEC. 1.3. Section 460.7 is added to the Public Utilities Code, to read.

460.7. (a) Beginning July 1, 1990, and continuing thereafter, every passenger stage corporation shall file with the commission one of the following.

(1) A certificate of workers' compensation coverage for its employees issued by an admitted insurer.

(2) A certification of consent to self-insure issued by the Director of Industrial Relations, and the identity of the administrator of the carrier's workers' compensation self-insurance plan.

(3) A statement under penalty of perjury, stating that, in its operations as a passenger stage corporation, it does not employ any person in any manner so as to become subject to the workers' compensation laws of this state.

(b) The workers' compensation certified to under paragraph (1) of subdivision (a) shall be effective until canceled. Cancellation shall require 30 days' advance notice.

(c) If, after filing the statement described in paragraph (3) of subdivision (a), the corporation becomes subject to the workers' compensation laws of this state, the corporation shall promptly notify the commission that the corporation is withdrawing its statement under paragraph (3) of subdivision (a), and shall simultaneously file the certificate described in either paragraph (1) or (2) of subdivision (a)

(d) The commission may adopt rules and regulations that it determines to be necessary to carry out this section.

SEC. 1.5. Section 1043 is added to the Public Utilities Code, to read:

1043. Every passenger stage corporation earning over three hundred fifty thousand dollars ($350,000) in annual gross operating revenue shall, under oath, file annually a report indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period. The commission shall submit a copy of the report to the administrator of the corporation's workers' compensation self-insurance plan if the corporation is self-insured, or to the corporation's workers' compensation insurer if the corporation's workers' compensation protection is provided by a policy or policies

of insurance. The commission shall not be obligated to undertake an independent investigation of the adequacy of workers' compensation insurance coverage based on the information contained in the report if the carrier has complied with Section 460.7.

SEC. 1.6. Section 1063.5 of the Public Utilities Code is amended to read:

1063.5. (a) The commission shall issue or authorize the transfer of no certificate under this article except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the certificate.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the certificate.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 460.5.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply.

(c) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 3553.

SEC. 1.7. Section 3553 of the Public Utilities Code is amended to

read·

3553. (a) The commission shall issue or authorize the transfer of no permit under this chapter except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the permit.

(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the permit.

(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

(7) Has filed with the commission the certificate of workers' compensation insurance coverage or statement required by Section 3554.

(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be inspected by the commission and the Department of the California Highway Patrol.

(b) With respect to paragraphs (2) and (6) of subdivision (a), the commission may base a finding on a certification by the commission that an applicant has filed, with the commission, a sworn declaration of ability to comply and intent to comply

(c) The commission shall, commencing on April 15, 1989, and quarterly thereafter, prepare and submit to the Legislature a report of its implementation of this section. This report may be combined with the report required by Section 1063 5

SEC. 1.8. Section 3554 of the Public Utilities Code is repealed.

SEC. 1.9. Section 3554 is added to the Public Utilities Code, to read:

3554 (a) Beginning July 1, 1990, and continuing thereafter, every highway permit carrier shall file with the commission one of the following:

(1) A certificate of workers' compensation coverage for its employees issued by an admitted insurer.

(2) A certification of consent to self-insure issued by the Director of Industrial Relations, and the identity of the administrator of the carrier's workers' compensation self-insurance plan

(3) A statement under penalty of perjury, stating that, in its operations as a highway permit carrier, it does not employ any person in any manner so as to become subject to the workers' compensation laws of this state.

(b) The workers' compensation certified to under paragraph (1) of subdivision (a) shall be effective until canceled. Cancellation shall require 30 days' advance notice.

(c) If, after filing the statement described in paragraph (3) of subdivision (a), the carrier becomes subject to the workers' compensation laws of this state, the carrier shall promptly notify the commission that the carrier is withdrawing its statement under paragraph (3) of subdivision (a), and shall simultaneously file the certificate described in either paragraph (1) or (2) of subdivision (a)

(d) The commission may adopt rules and regulations that it determines to be necessary to carry out this section.

SEC. 2. Section 1075 is added to the Public Utilities Code, to read:

1075 Every highway common carrier and cement carrier earning over three hundred fifty thousand dollars ($350,000) in annual gross operating revenue shall, under oath, file annually a report indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period. The annual financial report required by the commission from highway common carriers and cement carriers shall include this information. The commission shall submit a copy of the report to the administrator of the corporation's workers' compensation self-insurance plan if the corporation is self-insured, or to the carrier's workers' compensation insurer if the carrier's workers' compensation protection is provided by a policy or policies of insurance. The commission shall not be obligated to undertake an independent investigation of the adequacy of workers' compensation insurance coverage based on the information contained in the report, if the carrier has complied with Section 1064

SEC. 3. Section 3711 is added to the Public Utilities Code, to read.

3711. Every highway permit carrier earning over three hundred fifty thousand dollars ($350,000) in annual gross operating revenue shall, under oath, file annually a report indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period. The annual financial report required by the commission from highway permit carriers shall include this information. The commission shall submit a copy of the report to the administrator of the corporation's workers' compensation self-insurance plan if the corporation is self-insured, or to the carrier's workers' compensation

insurer if the carrier's workers' compensation protection is provided by a policy or policies of insurance. The commission shall not be obligated to undertake an independent investigation of the adequacy of workers' compensation insurance coverage based on the information contained in the report, if the carrier has complied with Section 3554.

SEC. 4. Section 5135.5 is added to the Public Utilities Code, to read:

5135 5. (a) Beginning July 1, 1990, and continuing thereafter, every household goods carrier shall file with the commission one of the following:

(1) A certificate of workers' compensation coverage for its employees issued by an admitted insurer.

(2) A certification of consent to self-insure issued by the Director of Industrial Relations, and the identity of the administrator of the carrier's workers' compensation self-insurance plan.

(3) A statement under penalty of perjury, stating that, in its operations as a household goods carrier, it does not employ any person in any manner so as to become subject to the workers' compensation laws of this state.

(b) The workers' compensation certified to under paragraph (1) of subdivision (a) shall be effective until canceled. Cancellation shall require 30 days' advance notice.

(c) If, after filing the statement described in paragraph (3) of subdivision (a), the carrier becomes subject to the workers' compensation laws of this state, the carrier shall promptly notify the commission that the carrier is withdrawing its statement under paragraph (3) of subdivision (a), and shall simultaneously file the certificate described in either paragraph (1) or (2) of subdivision (a).

SEC. 4.5. Section 5230 is added to the Public Utilities Code, to read:

5230. Every household goods carrier earning over three hundred fifty thousand dollars ($350,000) in annual gross operating revenue shall, under oath, file annually a report indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period The commission shall submit a copy of the report to the administrator of the carrier's workers' compensation self-insurance plan if the carrier is self-insured, or to the carrier's workers' compensation insurer if the carrier's workers' compensation protection is provided by a policy or policies of insurance. The commission shall not be obligated to undertake an independent investigation of the adequacy of workers' compensation insurance coverage based on the information contained in the report, if the carrier has complied with Section 5135

SEC. 5. Section 5374.6 is added to the Public Utilities Code, to read:

5374.6. Every charter-party carrier earning over three hundred

fifty thousand dollars ($350,000) in annual gross operating revenue shall, under oath, file annually a report indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period. The commission shall submit a copy of the report to the administrator of the carrier's workers' compensation self-insurance plan if the carrier is self-insured, or to the carrier's workers' compensation insurer if the carrier's workers' compensation protection is provided by a policy or policies of insurance. The commission shall not be obligated to undertake an independent investigation of the adequacy of workers' compensation insurance coverage based on the information contained in the report, if the carrier has complied with Section 5378.1.

SEC. 6. Section 5378.1 is added to the Public Utilities Code, to read:

5378.1. (a) Beginning July 1, 1990, and continuing thereafter, every charter-party carrier shall file with the commission one of the following:

(1) A certificate of workers' compensation coverage for its employees issued by an admitted insurer.

(2) A certification of consent to self-insure issued by the Director of Industrial Relations.

(3) A statement under penalty of perjury, stating that, in its operations as a charter-party carrier, it does not employ any person in any manner so as to become subject to the workers' compensation laws of this state.

(b) The workers' compensation certified to under paragraph (1) of subdivision (a) shall be effective until canceled. Cancellation shall require 30 days' advance notice.

(c) If, after filing the statement described in paragraph (3) of subdivision (a), the carrier becomes subject to the workers' compensation laws of this state, the carrier shall promptly notify the commission that the carrier is withdrawing its statement under paragraph (3) of subdivision (a), and shall simultaneously file the certificate described in either paragraph (1) or (2) of subdivision (a).

(d) The commission may adopt rules and regulations that it determines to be necessary to carry out this section.

SEC. 7. The sum of ninety-five thousand dollars ($95,000) is hereby appropriated to the Public Utilities Commission for the purposes of this act in accordance with the following schedule:

(a) From the Transportation Rate Fund, seventy thousand dollars ($70,000).

(b) From the Public Utilities Commission Transportation Reimbursement Account in the General Fund, twenty-five thousand dollars ($25,000).

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1241

An act to add Chapter 5 (commencing with Section 4800) to Part 2.5 of Division 4 of the Public Resources Code, relating to environmental protection, and to add Items 3760-101-730, 3760-302-786, 3760-301-565, 3790-101-733, 3790-302-721, 3790-302-722, 3790-301-728, 3790-302-786, 3790-305-721, 3810-301-721, and 3810-301-722 to Section 2.00 of the Budget Act of 1989, relating to state funds, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Chapter 5 (commencing with Section 4800) is added to Part 2.5 of Division 4 of the Public Resources Code, to read:

CHAPTER 5. TIMBERLAND WILDLIFE STUDY

4800. It is the intent of the Legislature, in enacting this chapter, to do all of the following:

(a) To provide coordination on wildlife and timberland issues within the Resources Agency.

(b) To improve and coordinate the state data bases for use in analyzing the cumulative impacts of timber harvesting pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(c) To improve the technical basis upon which the Department of Fish and Game predicates recommendations for mitigating site-specific and cumulative effects on wildlife from timber harvesting activities.

(d) To provide recommendations to the board concerning creation of a list of species of special concern for which additional forest practices rules may be needed.

(e) To provide recommendations to the Fish and Game Commission concerning additions to its list of species that are threatened or endangered.

(f) To provide authority to the state to work cooperatively with

the United States Forest Service, including the ability to provide and receive funding for wildlife studies.

4801. The Timberland Task Force is hereby created. The Secretary of the Resources Agency or the secretary's designee shall serve as chairperson of the task force. The Director of Forestry and Fire Protection and the Director of Fish and Game shall also be members of the task force. The secretary and two directors shall select eight additional members by March 1, 1990, with technical knowledge of biology or management of timberland ecosystems, with one person from each of the following:

(a) The timber industry.

(b) Environmental organizations.

(c) A California academic institution.

(d) United States Forest Service.

(e) Bureau of Land Management of the United States Department of Interior.

(f) National Park Service.

(g) The Department of Parks and Recreation.

(h) The United States Fish and Wildlife Service

4802. The Timberland Task Force shall do all of the following:

(a) Develop a coordinated base of scientific information on the location, extent, and species composition of timberland ecosystems in California which does all of the following:

(1) Accommodates a range of definitions for timberland habitats, including old growth timberland.

(2) Permits evaluation of the cumulative impact of timber harvesting and other activities on the biodiversity of timberland ecosystems and on individual species.

(3) Permits evaluation of timberland habitat for its contribution, if any, to the overall maintenance of specific wildlife species in California.

(4) Permits estimation of the economic impact of alternative mitigation measures.

(b) Design and contract for studies to do the following:

(1) Validate wildlife habitat models and propose management prescriptions for wildlife species utilizing timberland habitats.

(2) Evaluate the effectiveness of alternative mitigation measures designed to minimize significant adverse environmental impacts of timber harvesting.

(3) Develop and evaluate alternative management programs designed to maintain or develop the physical characteristics of wildlife habitats

(c) Identify critical habitat areas necessary to maintain and restore viable populations of species dependent upon specific timberland habitats for all or part of their life cycle. Studies shall commence on old growth and associated timberland habitats utilized by old growth-associated wildlife species. Work shall commence in the north coastal region and proceed to the northern, central, and southern Sierra region.

(d) Identify species of special concern as follows:

(1) Identify wildlife species that are or may become endangered, threatened, or of special concern as the result of management activities on private and public timberlands.

(2) Conduct evaluations which include a statement of the relative risk of extinction on a regional and statewide basis.

4803. On or before January 1, 1992, the task force shall transmit its findings to the Fish and Game Commission, with recommendations to add or remove species from the candidate list of threatened or endangered species. The task force shall make recommendations to the board for the establishment of a list of "Species of Special Concern" for which new forest practice rules may be necessary pursuant to Chapter 8 (commencing with Section 4511) of Part 2.

4804. On or before January 1, 1992, the task force shall report to the Legislature on the implementation of this chapter, the results of the study, the recommendations made to other agencies, and the operation of the data base.

4805. (a) The director shall establish a schedule of user fees for persons using the department's data base developed pursuant to Section 4802, which does not exceed the reasonable costs for developing, updating, and maintaining the data base.

(b) The department shall utilize its data base for the review of timber harvesting plans as appropriate, and shall permit the use of its data base by timber harvesting plan applicants for the preparation of timber harvesting plans and by other persons, upon request.

(c) Commencing on January 1, 1992, the department shall charge a fee to users of the data base pursuant to this section.

SEC. 2. The Legislature hereby finds and declares that:

The California Academy of Sciences, a private, nonprofit organization, possesses national and international prominence as a major natural history museum. With respect to a wide range of natural science issues, the California Academy of Sciences has been a direct asset to state agencies, particularly in the areas of environmental research and the protection of rare and endangered plants, habitats, and species.

SEC. 3. The sum of nine hundred thousand dollars ($900,000) is hereby appropriated, in accordance with the following schedule:

(a) (1) Four hundred thousand dollars ($400,000) from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the Resources Agency for allocation to the Timberland Task Force created pursuant to Section 4801 of the Public Resources Code for expenditure from January 1, 1990, through December 31, 1991, for the purpose of carrying out the duties of the task force.

(2) All moneys appropriated in this subdivision shall be repaid by user fees established pursuant to subdivision (a) of Section 4805 of the Public Resources Code.

(b) Five hundred thousand dollars ($500,000) from the General

Fund to the Controller, for allocation, without regard to fiscal years, to the California Academy of Sciences for capital improvements, including the construction of new, and the restoration of existing, scientific exhibits and educational facilities. The California Academy of Sciences shall provide a matching sum for these purposes obtained through gifts and donations of nonstate money.

SEC. 4. The sum of twenty-seven million seven hundred ninety thousand dollars ($27,790,000) is hereby appropriated in accordance with the following schedule:

(a) $2,208,000 from the General Fund, to be allocated as follows:

(1) $300,000 to the Department of Transportation for the planning, design, or construction of soundwalls along Interstate 405 between Victory Boulevard and Sherman Way in Los Angeles County.

(2) $300,000 to the Department of Boating and Waterways for local assistance to the Carlsbad Boulevard Shoreline Protection Project.

(3) $1,250,000 to the Department of Parks and Recreation, for local assistance, to be allocated as grants as follows:

(A) $250,000 to the City of Calexico for a swimming pool.

(B) $250,000 to the City of Los Angeles for restoration of Eagle Rock Library.

(C) $200,000 to the City of Hawthorne, for acquisition of the Glascow Strip property.

(D) $300,000 to the Board of Trustees of the California Museum of Latino History Art and Culture for preliminary plans and administrative costs of the Latino History Museum.

(E) $250,000 to the City of Sacramento for the Multicultural Park.

(F) $100,000 to the City of Long Beach for the Long Beach Nature Center.

(4) $258,000 to the State Water Resources Control Board for the San Francisco Regional Board to continue underground tank cleanup in the Santa Clara Valley.

(b) $3,765,000 from the Environmental License Plate Fund, to be allocated as follows:

(1) $1,544,000 to the Department of Fish and Game, for allocation as follows:

(A) $100,000 to provide additional staffing for timber harvesting plan reviews.

(B) $60,000 for the Shell Marsh Interpretive Center.

(C) $750,000 for the Mono Lake Creek Studies.

(D) $234,000 for the Lake Merritt Observation Deck.

(2) $950,000 to the Wildlife Conservation Board for the acquisition of rare habitat areas in accordance with the following schedule:

(A) $450,000 for the Santa Lucia Mountains.

(B) $500,000 for the San Joaquin Valley.

(3) $350,000 to the State Coastal Conservancy for assistance to the Mission Bay Park, South Shores Development.

(4) $921,000 to the Department of Parks and Recreation, for

allocation as follows:

(A) $370,000 to the City of Redding, Museum Complex, preliminary plans, working drawings, and site development.

(B) $51,000 to the City of Monrovia for the Ben Overturff Trail rehabilitation project.

(C) $500,000 for the Millerton Lake State Recreation Area and Lost Lake Recreation Area trail development project and for environmental studies for the San Joaquin Parkway general plan.

(5) $150,000 to the State Water Resources Control Board for allocation as follows·

(A) $75,000 for a grant to the City of San Francisco to address water quality and water level problems at Lake Merced.

(B) $75,000 for a grant to the San Diego Bay Interagency Panel to address water quality problems in San Diego Bay.

(6) $250,000 to the Department of Education for the Environmental Education Project.

(c) $17,064,000 from the Public Resources Account, Cigarette and Tobacco Products Surtax Fund, for allocation as follows:

(1) $690,000 to the Department of Fish and Game for allocation as follows:

(A) $290,000 for purposes of Chapter 637 of the Statutes of 1987 to enhance and protect wildlife habitat.

(B) $200,000 for the Urban Fishing Enhancement Program.

(C) $200,000 for support of the activities of the "1601 Task Force."

(2) $750,000 to the State Coastal Conservancy for allocation as follows.

(A) $100,000 for the Petaluma River Enhancement Project.

(B) $650,000 for the Mission Bay Park South Shore Development Project.

(3) $15,724,000 to the Department of Parks and Recreation, for allocation as follows:

(A) $230,000 as a grant to the City of Bellflower, for the Bellflower Park Project.

(B) $125,000 as a grant to the City of Desert Hot Springs for Wardman Park rehabilitation.

(C) $125,000 as a grant to the City of Perris for Bob Long Park rehabilitation.

(D) $300,000 as a grant to the City of Half Moon Bay for Coastside Park planning and specifications.

(E) $309,000 as a grant to the City of Pittsburg, for relocation and restoration costs of Cornwall Station.

(F) $1,000,000 as a grant to the City of Norwalk for the Norwalk Sports Complex.

(G) $300,000 as a grant to the East Bay Regional Park District for acquisition of the Elwood Property.

(H) $250,000 as a grant to the County of Santa Barbara for the Goleta Youth Center.

(I) $475,000 as a grant to the City of Los Angeles for restoration work on the Hansen Dam Project.

(J) $250,000 as a grant to the City of Lakewood for the Mayfair Park Preservation and Revitalization Project.

(K) $370,000 as a grant to the County of Santa Clara for Phase I of the Los Alamitos/Calero Creek Trail Project.

(L) $125,000 as a grant to the City of Pasadena for the Villa-Parke Community Center project.

(M) $250,000 as a grant to the El Dorado Hills Community Services District for Phase I of the proposed park complex.

(N) $200,000 as a grant to the Northern California Center for Afro-American History and Life for the Afro-American Museum.

(O) $900,000 as a grant to the Mission Trails Regional Park Association, a nonprofit corporation, for plans and construction of a ranger station and visitor center in the Mission Trails Regional Park.

(P) $100,000 for the San Diego Railroad Museum Association, a nonprofit corporation, for renovation of the museum.

(Q) $250,000 as a grant to the City of Victorville for construction of the Hook Community/Sports Center.

(R) $250,000 as a grant to the City of Rancho Cucamonga for design and construction of the North Etiwanda Community Park.

(S) $140,000 as a grant to the City of Redding for construction of the Sacramento River Pedestrian Trail Bridge.

(T) $20,000 as a grant to the City of San Marino for Lacy Park restoration.

(U) $35,000 as a grant to the City of Arcadia for renovation of Eisenhower Park.

(V) $23,000 as a grant to the City of Temple City for lighting and security improvements to Temple City Park.

(W) $250,000 as a grant to the City of Rocklin for athletic field development.

(X) $150,000 as a grant to the City of San Jose for the Guadalupe River Parkway Project.

(Y) $1,500,000 as a grant to the City of San Diego for the Otay River Valley Park project.

(Z) $100,000 as a grant to the County of San Bernardino for the Santa Ana River Trail Project.

(AA) $100,000 as a grant to the County of San Bernardino for the Prado Dam Park Project.

(BB) $75,000 as a grant to the City of Pomona for the Philadelphia Park Project.

(CC) $90,000 as a grant to the City of Chino for the McCloud Park Project.

(DD) $70,000 as a grant to the City of San Bernardino for the Nunez Park Project.

(EE) $65,000 as a grant to the City of Fontana for the Oakridge Park Project.

(FF) $500,000 as a grant to the Association of Bay Area Governments for the San Francisco Bay Trail Project.

(GG) $297,000 as a grant to the City of Modesto for the Aqueduct Park Project.

(HH) $200,000 as a grant to the City of Milpitas for playground renovation.

(II) $500,000 as a grant to the County of Nevada for the Donner Summit Bridge Project.

(JJ) $65,000 as a grant to the City of Brownsville for the Ponderosa Community Center Project.

(KK) $100,000 as a grant to the County of Sonoma for the Santa Rosa Creek Planning and Restoration Project.

(LL) $350,000 as a grant to the Orangevale Parks and Recreation District for the Community Center Project.

(MM) $500,000 as a grant to the City of Glendale for the San Rafael Mountains Open Space Acquisition Project.

(NN) $255,000 as a grant to the City of Garden Grove for the Pioneer Park Project.

(OO) $500,000 as a grant to the City of Santa Ana for the Center Park Soccer Field Project.

(PP) $200,000 as a grant to the City of Westminister for acquisition of the Edison Right-of-Way.

(QQ) $500,000 as a grant to the City of La Mirada for the Neff Park Project.

(RR) $20,000 as a grant to the City of Grover City for Children/Senior Center renovations and the Ramona Gardens restoration projects.

(SS) $500,000 as a grant to the County of Sacramento to initiate and coordinate an interagency cooperative program for the planning, restoration, development, and expansion of a wildlife refuge in the wetlands area of south Sacramento County.

(TT) $2,500,000 for the acquisition of the Redfern property adjacent to Henry Coe State Park.

(UU) $300,000 for the acquisition of Gray Whale Ranch in Santa Cruz County.

(VV) $10,000 to update the Napa-Solano Skyline Park.

(4) $200,000 to the Department of Water Resources for assistance to the Grasslands Water District for emergency wetlands maintenance.

(d) $350,000 from the Off Highway Vehicle Fund to the Department of Parks and Recreation for the Hungry Valley State Vehicle Recreation Area Quail Canyon project.

(e) $78,000 from the State Parks and Recreation Fund for allocation to the Department of Parks and Recreation for the following purposes:

(1) $10,000 for the Donner Party Trail study.

(2) $20,000 for the Town of Locke acquisition feasibility study.

(3) $48,000 for additional staffing at the Mitchell Caverns State Preserve.

(f) $25,000 from the Harbors and Watercraft Revolving Fund to the Department of Boating and Waterways for a grant to the County of Stanislaus for additional law enforcement at Turlock Lake.

(g) Notwithstanding any other provision of law, if SCA 1 is

approved by the voters on June 5, 1990, the Controller shall transfer $4,000,000 from the Highway Users Tax Account, Transportation Tax Fund, to the State Parks and Recreation Fund, and that amount is hereby appropriated to the Department of Parks and Recreation for maintenance and repair of highways in units of the state park system.

SEC. 5. Item 3760-101-730 is added to Section 2.00 of the Budget Act of 1989, to read:

STATE COASTAL CONSERVANCY FUND OF 1984

3680-101-730—For local assistance, State Coastal Conservancy, payable from the State Coastal Conservancy Fund of 1984		300,000
Schedule:		
(1) San Francisco Fisherman's Wharf, Hyde Street Marina Project	300,000	

SEC. 6. Item 3760-302-786 is added to Section 2.00 of the Budget Act of 1989, to read:

CALIFORNIA WILDLIFE, COASTAL AND PARK LAND CONSERVATION PROGRAM

3760-302-786—For local assistance, State Coastal Conservancy, payable from the California Wildlife, Coastal and Park Land Conservation (Bond) Fund of 1988		1,500,000
Schedule:		
(1) City of Huntington Beach, Pier restoration	1,500,000	

SEC. 7. Item 3760-301-565 is added to Section 2.00 of the Budget Act of 1989, to read:

STATE COASTAL CONSERVANCY PROGRAM

3760-301-565—For capital outlay, State Coastal Conservancy, payable from the State Coastal Fund of 1976		2,045,000
Schedule:		
(1) Cascade Ranch: Irrigation water impoundments	245,000	
(2) Manhattan Beach Pier reconstruction	500,000	
(3) Point Cabrillo	300,000	
(4) Ventura Beach Pier restoration	1,000,000	

SEC. 8. Item 3790-101-733 is added to Section 2.00 of the Budget Act of 1989, to read:

STATE BEACH, PARK, RECREATIONAL AND HISTORICAL FACILITIES PROGRAM

3790-101-733—For local assistance, Department of Parks and Recreation, payable from the State Beach, Park, Recreational and Historical Facilities Fund of 1974		2,776,000
Schedule:		
(1) City of Los Angeles, Elysian Park	200,000	
(2) City of Burbank, Little Theatre	100,000	
(3) City of Campbell, Ainsley House	145,000	
(4) City of Fillmore, Shiells Park Lighting	50,000	
(5) City of Fresno, Agricultural Museum	1,000,000	
(6) County of Fresno, Lost Lake Recreation Area, development	900,000	
(7) Mercy Family Housing - Historical	331,000	
(8) National City, San Diego Filipino Center	50,000	

SEC. 9. Item 3790-302-721 is added to Section 2.00 of the Budget Act of 1989, to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM

3790-302-721—For capital outlay, Department of Parks and Recreation, payable from the Parklands Acquisition and Development fund of 1980		2,575,000
Schedule:		
(1) Marconi Conference, Construction and Site Improvements	775,000	
(2) Torrey Pines SP: Sunset Del Mar acquisition	1,800,000	
Provisions:		
The department may allocate funds in category (1) to a nonprofit entity for improvements to the Marconi Conference Center, provided the department secures an irrevocable commitment from the present owner to transfer the property to the state by June 30, 1990. Expenditure of funds in category (1), when allocated to a nonprofit entity,		

shall be exempt from Public Works Board Review.

SEC. 10. Item 3790-302-722 is added to Section 2.00 of the Budget Act of 1989, to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM

3790-302-722—For capital outlay, Department of Parks and Recreation, payable from the Parklands Acquisition and Development fund of 1984 1,895,000
Schedule:
(1) Monterey Dunes, Ponderosa 1,895,000

SEC. 11. Item 3790-301-728 is added to Section 2.00 of the Budget Act of 1989, to read:

RECREATION AND FISH AND WILDLIFE ENHANCEMENT PROGRAM OF 1970

3790-301-728—For capital outlay, Department of Parks and Recreation, payable from the Recreation and Fish and Wildlife Enhancement (1970 Bond) Fund 309,000
Schedule:
(1) Lake Oroville SRA/Lime Saddle Project, Infrastructure development 309,000

SEC. 12. Item 3790-302-786 is added to Section 2.00 of the Budget Act of 1989, to read:

CALIFORNIA WILDLIFE, COASTAL AND PARK LAND CONSERVATION PROGRAM

3790-302-786—For capital outlay, Department of Parks and Recreation, payable from the California Wildlife, Coastal and Park Land Conservation (Bond) Fund of 1988 4,885,000
Schedule:
(1) California Citrus State Historic Park, Immediate Public Use Facilities--P,W,C 1,150,000
(2) Empire Mine SHP: renovation 250,000
(3) Kenneth Hahn SRA 300,000
(4) Old Town San Diego SHP: comfort

stations 135,000
(5) State Indian Museum 300,000
(6) Old Town San Diego SHP, Bohannon Potter Village acquisition 2,750,000

Provisions:

1. Preliminary plans and working drawings as appropriated in Schedule (1) may be prepared by the joint powers agency formed by the Department of Parks and Recreation and the City of Riverside to plan and develop California Citrus State Historic Park. The site plan and related documents, if prepared to a scale providing detail of at least one inch equaling forty feet, shall be deemed the preliminary plan for the purposes of Section 13332.11 of the Government Code and Section 3 of the Budget Act.

SEC. 13. Item 3790-305-721 is added to Section 2.00 of the Budget Act of 1989, to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM

3790-305-721—For capital outlay, Department of Parks and Recreation, payable from the Parklands Fund of 1980, for transfer to Item 3760-301-565 1,100,000

Schedule:

(1) Latigo Shores, acquisition 1,100,000

Provisions:

1. The purpose of this appropriation is to provide funds to the Department of Parks and Recreation to acquire Latigo Shores from the State Coastal Conservancy. Funds transferred to the conservancy in this item shall be expended by the conservancy in accordance with the schedule in 3760-301-565.

SEC. 14. Item 3810-301-721 is added to Section 2.00 of the Budget Act of 1989, to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM OF 1980

3810-301-721—For capital outlay, Santa Monica Mountains Conservancy, payable from the Parklands Acquisition and Development fund of 1980 300,000
Schedule:
(1) Malibu Canyon acquisition 300,000

SEC. 15. Item 3810-301-722 is added to Section 2.00 of the Budget Act of 1989, to read:

PARKLANDS ACQUISITION AND DEVELOPMENT PROGRAM OF 1984

3810-301-722—For capital outlay, Santa Monica Mountains Conservancy, payable from the Parklands Acquisition and Development fund of 1984 3,457,000
Schedule:
(1) Santa Susana Mountains/Simi Hills Acquisition Projects 1,254,000
(2) Santa Clarita Woodlands acquisition 500,000
(3) Malibu Creek SP Phase II acquisition 1,703,000
Provisions:
1. Funds appropriated in category (1) of this item are available only upon (a) enactment of legislation to revise the recreational trail corridor boundary for the Rim of the Valley Trail Corridor to include the Santa Clarita Woodlands portion of the Santa Susana Mountains, and (b) completion of a formal feasibility study by the Department of Parks and Recreation regarding the possible creation of a state park in the Santa Clarita Woodlands area.
2. Notwithstanding any other provision of law, the funds in category (1) and (2) of this item are available for (a) capital outlay and local assistance projects in the Santa Susana Mountains and Simi Hills within the Rim of the Valley Corridor pursuant to the Conservancy's Work Program for this area and (b) related

project planning and design.

SEC. 16. Notwithstanding any other provision of law, the funds appropriated in Sections 4, 5, and 6 of this act shall be available for expenditure for capital outlay or local assistance.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure adequate funding for the projects outlined in this bill, it is necessary that this act take effect immediately.

CHAPTER 1242

An act to amend Sections 8568, 8680, 8681, 8681.5, 8681.7, and 8683 of, and to repeal and add Section 8682 of, the Fish and Game Code, relating to commercial fishing, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 8568 of the Fish and Game Code is amended to read:

8568. Drift gill net shark and swordfish permits shall be issued in two categories:

(a) A category of prior permittees, which shall consist of drift gill net shark and swordfish permittees who meet all of the following requirements:

(1) Possess a valid permit for the use of gill nets authorized pursuant to Section 8681.

(2) Possessed a valid drift gill net shark and swordfish permit during the preceding season and that permit was not subsequently revoked.

(3) During one of the two immediately preceding permit years, either landed at least 2,500 pounds of swordfish or 1,000 pounds of shark or landed shark or swordfish for which the permittee was paid at least one thousand dollars ($1,000). Landings shall be verified by the applicant's submission of landing receipts as provided in Section 8011.

(b) A category of new entrants. An applicants shall be eligible for this category if he or she does not qualify as a prior permittee and possesses a valid permit for the use of gill nets authorized pursuant to Section 8681.

SEC. 2. Section 8680 of the Fish and Game Code is amended to read:

8680. (a) The Legislature finds and declares that it is in the best interest of the people of the state, the commercial fishing industry, and California's marine resources that fishermen who use gill nets or trammel nets be experienced in the use of those nets.

(b) The Legislature further finds and declares that in order to assure the long-term viability of California's gill and trammel net fisheries that a gill and trammel net permit limitation program should be established.

SEC. 3. Section 8681 of the Fish and Game Code is amended to read:

8681. (a) Gill nets or trammel nets shall not be used for commercial purposes except under a revocable, nontransferable permit issued by the department. A permit may be revoked and canceled by the director upon conviction for a violation of a provision of this article, or regulation authorized by this article, by the permittee, his or her agents, servants, or employees, or those acting under his or her direction and control.

(b) (1) The owner or operator of a vessel, as designated pursuant to Section 7888, using a gill net or trammel net shall have obtained a valid gill net or trammel net permit and shall be in possession of the permit when engaged in fishing for commercial purposes with a gill net or trammel net, except as provided in subdivision (e).

(2) The department shall issue permits to the owner or operator of a currently registered commercial fishing vessel who is qualified pursuant to subdivision (c) or (d).

(3) The department shall issue permits at its offices in Menlo Park, Monterey, Long Beach, and San Diego.

(4) The department shall issue only one permit to any person.

(c) The applicant for a permit shall meet all of the following to qualify for a permit:

(1) Be licensed pursuant to Section 7850.

(2) Possessed a valid gill net or trammel net permit issued pursuant to this section during the previous permit year which was not permanently revoked or canceled by the commission.

(3) Make application for permit renewal which shall be received during ordinary business days and hours at one of the department offices designated in paragraph (3) of subdivision (b) which shall be received not later than 5 p.m., on the first ordinary business day of June of the year for which the permit is to be issued.

(4) If, on or after April 1, 1993, the department finds that the total number of permits issued pursuant to this section is greater than 325, then renewals for subsequent permit years shall require that, during the immediately preceding permit year, a permittee has either landed at least 2,000 pounds of fish other than thresher shark, swordfish, or herring taken in gill nets or trammel nets, or landed fish other than thresher shark, swordfish, or herring taken in gill nets or trammel nets for which the permittee was paid at least two thousand dollars ($2,000). Landings shall be verified by the applicant's submission of landing receipts as provided in Section 8043 at the time

of application for permit renewal.

(5) For purposes of this subdivision, "permit year" means the permit is valid from April 1 of the year for which the permit is to be issued through March 31 of the next calendar year.

(d) (1) If, on or after June 1, 1991, the total number of permits issued pursuant to this section is less than 325, the department shall conduct a random drawing of names submitted by interested commercial fishermen who possess a valid crewmember permit issued pursuant to Section 8682. The number of new permits issued during the current permit year as a result of the random drawing shall not exceed the difference between 325 and the total number of permits issued for the current permit year pursuant to subdivision (c). The random drawing shall be conducted on the 10th ordinary business day in June.

(2) Notwithstanding subdivision (a) if, on or after June 1, 1991, the total number of permits issued pursuant to this section does not exceed 325, a holder of the permit may transfer his or her permit to a person who possesses a valid crewmember permit issued pursuant to Section 8682.

(e) This section does not apply to gill nets used pursuant to Article 15 (commencing with Section 8550) of Chapter 2, or drift gill nets used pursuant to Article 16 (commencing with Section 8560) and Article 17 (commencing with Section 8585) of Chapter 2.

SEC. 4. Section 8681.5 of the Fish and Game Code is amended to read:

8681.5. (a) On or after January 1, 1990, the department shall issue no new gill net or trammel net permits pursuant to Section 8681, except as provided in subdivision (d) of Section 8681 or this section.

(b) Notwithstanding Section 8681, any person who has an existing, valid permit issued pursuant to Section 8681, and who either (1) presents to the department satisfactory evidence that he or she has taken and landed fish for commercial purposes in at least 15 of the preceding 20 years, or (2) becomes disabled in such a manner that he or she can no longer earn a livelihood from commercial fishing, may transfer that permit to any person otherwise qualified pursuant to Section 8682 upon payment of the fee prescribed under Section 8683.

(c) The department shall establish a fee for the transfer of a gill and trammel net permit issued pursuant to Section 8682 in an amount not more than the cost of the permit fee as prescribed under Section 8683.

(d) For purposes of subdivision (b), the death of the holder of the permit is a disability which authorizes transfer of the permit by that person's estate to a qualified fisherman pursuant to Section 8682. For purposes of a transfer under this subdivision, the estate shall renew the permit, as specified in Section 8681, if the permittee did not renew the permit before his or her death. The application for transfer by that person's estate shall be received by the department, including the name, address, and telephone number of the qualified

fisherman to whom the permit will be transferred, within one year of the date of death of the permitholder. If no transfer is initiated within one year of the date of death of the permitholder, the permit shall revert to the department for disposition pursuant to Section 8681.

(e) Section 8101 does not apply to a permit issued pursuant to this article.

SEC. 5. Section 8681.7 of the Fish and Game Code is amended to read:

8681.7. (a) Notwithstanding Section 8681.5, any person who possessed a valid permit issued pursuant to Section 8681 and who was denied renewal of that permit, may appeal to the commission where evidence can be presented that illness or the loss of a vessel resulted in the person not meeting the qualifications for renewal or reissuance of that permit.

(b) Any person, who possessed a valid permit issued pursuant to Section 8681 during the preceding season and whose application has been denied because he or she failed to meet the landing requirements or renewal deadline specified in paragraphs (3) and (4) of subdivision (c) of Section 8681, may appeal to the commission, submitting circumstances surrounding nonuse of the permit or failure to renew by the deadline. The commission may authorize renewal of a permit issued pursuant to Section 8681 if it finds the nonuse of the permit or failure to meet the renewal deadline were for reasons beyond the control of the applicant under the circumstances.

(c) An appeal pursuant to this section shall be filed with the commission within 60 days of a denial of the renewal of a permit.

(d) If the commission determines that a permit is to be issued to a prior permittee under this section, a permit shall be issued to that person upon payment of required fees.

SEC. 6. Section 8682 of the Fish and Game Code is repealed.

SEC. 7. Section 8682 is added to the Fish and Game Code, to read:

8682. A person who does not possess a permit issued pursuant to Section 8681 may qualify for a permit transfer as provided for under paragraph (2) of subdivision (d) of Section 8681 and Section 8681.5 or a random drawing for a permit as provided for under paragraph (1) of subdivision (d) of Section 8681 if the person meets all of the following requirements:

(a) The person possesses a gill and trammel net crewmember permit issued by the department. To qualify for a crewmember permit issued pursuant to this section, an applicant shall meet both of the following:

(1) Be licensed pursuant to Section 7850.

(2) Have worked as a crewmember for at least 12 months on vessels using gill nets or trammel nets, and have worked at least 180 days at sea on those vessels during the three-year period prior to the date of application.

(b) The applicant shall supply documentation that he or she was

a legally licensed commercial fisherman when he or she met the crewmember experience requirements. Crewmember experience shall be documented by fishing records submitted to the department as required by Section 174 of Title 14 of the California Code of Regulations prior to January 1, 1990, or pursuant to other regulations adopted by the commission.

(c) In order to qualify for a random drawing during the current permit year, a person shall submit an application for a new crewmember permit, which shall be received during ordinary business days and hours at one of the department offices located at Menlo Park, Monterey, Long Beach, or San Diego, and which shall be received not later than 5 p.m. on the first ordinary business day of June of the year for which the permit is to be issued. A gill and trammel net crewmember permit year shall extend from April 1 of the year for which the permit is issued to March 31 of the next calendar year, inclusive

(d) The fee for a gill and trammel net crewmember permit is ten dollars ($10).

SEC. 8. Section 8683 of the Fish and Game Code is amended to read:

8683. On or after April 1, 1990, the fee for a permit issued pursuant to Section 8681 shall be two hundred fifty dollars ($250).

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

CHAPTER 1243

An act to amend Section 214 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated

for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

(1) The owner is not organized or operated for profit; provided, that in the case of hospitals, the organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses has not exceeded a sum equivalent to 10 percent of those operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization which meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the organization, are not subject to the tax on unrelated business taxable income which is imposed by Section 511 of the Internal Revenue Code of 1986, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) which is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service

which state that the owner and the other organization qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The owner of the property and any other organization using the property as provided in subparagraph (A) shall also file duplicate copies of their most recently filed federal income tax returns

Nothing in subparagraph (A), (B), or (C) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where such use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of charitable organization in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research or oceanographic research), and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large. For purposes of this paragraph, "oceanographic research" means the study of the biology, geology, chemistry, and physics of the oceans and seas and underlying substrates, including the development of scientific measurements necessary to pursue that study, conducted by oceanographic research institutes based in counties of the 17th class, established prior to June 30, 1987.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and

funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and

Section 5 of Article XIII of the Constitution of the State of California and this section. The amendment of this paragraph made at the 1983–84 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or which is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property which would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property which is equal to the percentage which the number of low- and moderate-income elderly and handicapped families occupying the property is of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property in any year in which any of the following criteria are applicable:

(1) Twenty percent or more of the occupants of the property are lower income households whose rent does not exceed that prescribed by Section 50053 of the Health and Safety Code.

(2) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those

prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(3) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) Certify and ensure that there is a deed restriction, agreement, or other legal document which restricts the project's usage and which provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents do not exceed those prescribed by the terms of the financing or financial assistance.

(B) Certify that the funds which would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property which would otherwise be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility which would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations which meet all the requirements of subdivision (a) and owned and operated by funds, foundations, or corporations which meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

SEC. 2. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital,

scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses has not exceeded a sum equivalent to 10 percent of those operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization which meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the organization, are not subject to the tax on unrelated business taxable income which is imposed by Section 511 of the Internal Revenue Code of 1986, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) which is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided

in subparagraph (A) have filed with the assessor duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service which state that the owner and the other organization qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The owner of the property and any other organization using the property as provided in subparagraph (A) shall also file duplicate copies of their most recently filed federal income tax returns.

Nothing in subparagraph (A), (B), or (C) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of charitable organization in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research or oceanographic research), and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large. For purposes of this paragraph, "oceanographic research" means the study of the biology, geology, chemistry, and physics of the oceans and seas and underlying substrates, including the development of scientific measurements necessary to pursue that study, conducted by oceanographic research institutes based in counties of the 17th class, established prior to June 30, 1987.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than

collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting

all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. The amendment of this paragraph made at the 1983–84 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or which is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property which would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property which is equal to the percentage which the number of low- and moderate-income elderly and handicapped families occupying the property is of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property in any year in which any of the following criteria are applicable:

(1) Twenty percent or more of the occupants of the property are lower income households whose rent does not exceed that prescribed by Section 50053 of the Health and Safety Code.

(2) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or

is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(3) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) Certify and ensure that there is a deed restriction, agreement, or other legal document which restricts the project's usage and which provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents do not exceed those prescribed by the terms of the financing or financial assistance.

(B) Certify that the funds which would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households

As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property which would otherwise be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility which would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations which meet all the requirements of subdivision (a) and owned and operated by funds, foundations, or corporations which meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include

educational purposes. For purposes of this subdivision, educational purposes means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and shall not include those educational purposes and activities primarily for the benefit of an organization's shareholders. Educational activities shall include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

SEC. 3. Section 2 of this bill incorporates amendments to Section 214 of the Revenue and Taxation Code proposed by both this bill and SB 350. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 214 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 350, in which case Section 1 of this bill shall not become operative.

SEC. 4. Notwithstanding Section 2229 of the Revenue and Taxation Code, the requirements of that section relating to any exemption of property for more than five years or for more than 75 percent of the value thereof shall not apply to any exemptions made by this act. In addition, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 5. The amendments to Section 214 of the Revenue and Taxation Code made by this act shall be operative for the 1989–90 fiscal year and each fiscal year thereafter.

CHAPTER 1244

An act to amend Sections 256 and 257 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 256 of the Welfare and Institutions Code is amended to read:

256. Subject to the orders of the juvenile court, a traffic hearing officer may hear and dispose of (1) any case in which a minor under the age of 18 years as of the date of the alleged offense is charged with any violation of the Vehicle Code not declared to be a felony, (2) a violation of subdivision (m) of Section 602 of the Penal Code, (3) a violation of the Fish and Game Code not declared to be a felony, (4) a violation of any of the equipment and registration provisions of the Harbors and Navigation Code, (5) a violation of any provision of an ordinance of a city, county, or local agency relating to traffic offenses,

or to nontraffic offenses regarding loitering or curfew, (6) a violation of Section 126 or 27176 of the Streets and Highways Code, (7) a violation of any provision of an ordinance of a city, county, or local agency relating to evasion of fares on a public transportation system, as defined by Section 99211 of the Public Utilities Code, (8) a violation of Section 640 or 640a of the Penal Code, or (9) a violation of the rules and regulations established pursuant to Sections 5003 and 5008 of the Public Resources Code.

SEC. 2. Section 257 of the Welfare and Institutions Code is amended to read:

257. With the consent of the minor, a hearing before a traffic hearing officer, or a hearing before a referee or a judge of the juvenile court, where the minor is charged with a traffic offense or a nontraffic offense as specified in this section, may be conducted upon an exact legible copy of a written notice given pursuant to Article 2 (commencing with Section 40500) of Chapter 2 of Division 17 or Section 41103 of the Vehicle Code, or an exact legible copy of a written notice given pursuant to Chapter 5C (commencing with Section 853.6) of Title 3 of Part 2 of the Penal Code when the offense charged is a violation of the Fish and Game Code not declared to be a felony, a violation of subdivision (m) of Section 602 of the Penal Code, a violation of a provision of an ordinance of a city, county, or local agency relating to loitering, curfew, or fare evasion on a public transportation system, as defined by Section 99211 of the Public Utilities Code, a violation of Section 640 or 640a of the Penal Code, or a violation of the rules and regulations established pursuant to Sections 5003 and 5008 of the Public Resources Code, in lieu of a petition as provided in Article 16 (commencing with Section 650).

CHAPTER 1245

An act to amend Sections 11370.2 and 11370.4 to the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 11370.2 of the Health and Safety Code is amended to read:

11370.2. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of a conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383,

whether or not the prior conviction resulted in a term of imprisonment.

(b) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(d) The enhancements provided for in this section shall be pleaded and proven as provided by law.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

SEC. 1.5. Section 11370.2 of the Health and Safety Code is amended to read:

11370.2. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(b) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any

other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(d) The enhancements provided for in this section shall be pleaded and proven as provided by law.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

SEC. 2. 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 conspiracy to violate 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 25 pounds by weight, the person shall receive an additional term of 10 years.

(2) Where the substance exceeds 100 pounds by weight, the person shall receive an additional term of 15 years.

The conspiracy enhancements provided for in this paragraph shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(c) 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.

(d) Any person convicted of a conspiracy to violate 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 25 pounds by weight, or 62 1/2 gallons by liquid volume, the person shall receive an additional term of 10 years.

The conspiracy enhancements provided for in this paragraph shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(e) 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.

(f) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(g) 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. 2.5. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a) Any person convicted of a violation of or of a conspiracy to violate, 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.

The conspiracy enhancements provided for in this paragraph shall

not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(b) Any person convicted of a violation of, or of conspiracy to violate, 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.

The conspiracy enhancements provided for in this paragraph shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(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. 3. Section 1.5 of this bill incorporates, in substantially the same form, amendments to Section 11370.2 of the Health and Safety Code proposed by both this bill and AB 2448. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 11370.2 of the Health and Safety Code, and (3) this bill is enacted after AB 2448, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates, in substantially the same form, amendments to Section 11370.4 of the Health and Safety Code proposed by both this bill and AB 2448. It shall only become operative if (1) both bills are enacted and become effective on

January 1, 1990, (2) each bill amends Section 11370.4 of the Health and Safety Code, and (3) this bill is enacted after AB 2448, in which case Section 2 of this bill shall not become operative.

SEC. 5. This bill shall become operative if only Assembly Bill 2448 of the 1989–90 Regular Session of the Legislature is also chaptered.

CHAPTER 1246

An act to add Chapter 1.85 (commencing with Section 188) to Part 1 of Division 1 of the Health and Safety Code, relating to health care.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989]

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

SECTION 1. Chapter 1.85 (commencing with Section 188) is added to Part 1 of Division 1 of the Health and Safety Code, to read:

CHAPTER 1.85. HUMAN IMMUNODEFICIENCY VIRUS (HIV) TREATMENT

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

(a) State-of-art knowledge regarding treatment of people infected with the human immunodeficiency virus (HIV) indicates that active HIV infection (AIDS) can be a manageable, though chronic, condition with the use of drugs such as zidovudine (AZT), aerosolized pentamidine, and ganciclovir. AIDS experts across the nation agree that early intervention with these drugs can prolong life, minimize the related occurrences of more serious illnesses, reduce more costly treatments, and maximize the HIV-infected person's vitality and productivity.

(b) For reasons of compassion and cost effectiveness, the State of California has a compelling interest in ensuring that its citizens infected with the HIV virus have access to these drugs.

(c) The department subsidizes the cost of these drugs for persons who do not have private health coverage, are not eligible for Medi-Cal, or cannot afford to purchase the drug privately. The subsidy program is funded through state and federal sources.

(d) Congress is expected to place limitations on the federal subsidy program which will jeopardize access to these life-prolonging drugs for people whose income is higher than federal income eligibility cap but lower than the state's income eligibility cap.

(e) It is critical that suffering persons with limited income have access to life-prolonging drugs. It is also critical that persons currently eligible for the subsidy program remain eligible regardless

of changes that may result from the congressional action and the enactment of this chapter. However, it is appropriate that people who can afford to pay a portion of the cost of treatment be obligated to share the cost of these drugs.

188.1. (a) To the extent that state and federal funds are appropriated in the Budget Act for these purposes, the director shall establish and may administer a program to provide drug treatments to persons infected with human immunodeficiency virus (HIV), the etiologic agent of acquired immune deficiency syndrome (AIDS). The director shall develop, maintain, and update as necessary a list of drugs to be provided under this program. Drugs on the list shall include, but not be limited to, the drugs zidovudine (AZT) and aerosolized pentamidine.

(b) The director may grant funds to a county public health department through standard agreements to administer this program in that county.

(c) The director shall establish a rate structure for reimbursement for the cost of each drug included in the program. Rates shall not be less than the actual cost of the drug. However, the director may purchase a listed drug directly from the manufacturer and negotiate the most favorable bulk price for that drug.

(d) Reimbursement under this chapter shall not be made for any drugs which are available to the recipient under any other private, state, or federal programs, or under any other contractual or legal entitlements, except that the director may authorize an exemption from this subdivision where exemption would represent a cost savings to the state.

188.2. (a) The department shall establish uniform standards of financial eligibility for the drugs under the program established under this chapter.

(b) Nothing in the financial eligibility standards shall prohibit drugs to an otherwise eligible person whose adjusted gross income does not exceed fifty thousand dollars ($50,000) per year. However, the director may authorize drugs for persons with incomes higher than fifty thousand dollars ($50,000) per year if the estimated cost of those drugs in one year is expected to exceed 20 percent of the person's adjusted gross income.

(c) The department shall establish and may administer a repayment schedule to determine the repayment obligation of a person receiving drugs No person shall be obligated for repayment whose adjusted gross income is less than four times the federal poverty level. The repayment obligation shall be the lesser of the following:

(1) Two times the person's annual state income tax liability, less funds expended by the person for health insurance premiums.

(2) The cost of drugs.

188 3 Any person deemed eligible under the HIV drug treatment subsidy program in existence as of the date the statute adding this chapter becomes operative shall be deemed eligible for

benefits under this chapter.

CHAPTER 1247

An act to amend Section 66784.4 of the Government Code, and to add Division 31 (commencing with Section 50000) to the Public Resources Code, relating to solid waste.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature hereby declares that the purpose of this act is as follows:

(a) To encourage recycling of sewage sludge for use as a fertilizer material.

(b) To encourage reduction of the amount of sewage sludge that is disposed of in municipal landfills.

(c) To make available to the agricultural industry additional fertilizer materials.

(d) To assure that facilities which produce fertilizer material derived from municipal sewage sludge are in compliance with all applicable requirements which are intended to protect public health and the environment, including any relevant waste discharge requirements imposed by a California regional water quality control board and local health departments.

(e) To assure that sites where the fertilizer material derived from municipal sewage sludge is applied as a fertilizer material are in compliance with all applicable requirements which are intended to protect public health and the environment, including any relevant waste discharge requirements imposed by a California regional water quality control board and local health departments.

(f) To assure that applications of fertilizer material derived from municipal sewage sludge be made at rates that protect public health, the environment, benefit the soil, and do not merely constitute disposal.

SEC. 2. Section 66784.4 of the Government Code is amended to read:

66784.4. (a) The board may, by regulation, specify classifications of solid waste facilities that shall be exempt from the requirements of Sections 66783.1 and 66784. Any regulation may be adopted only if the board makes all of the following findings:

(1) The exemption is not contrary to the public interest.

(2) The quantity of solid wastes to be disposed of at each site is insignificant.

(3) The nature of the solid wastes poses no significant threat to the public health, the public safety, or the environment.

(b) The application to land of agricultural products derived from municipal sewage sludge for use as a fertilizer material shall, based on a finding by the board that the nature of the solid waste poses no significant threat to the public health, the public safety, or the environment, be exempt from the requirements of Sections 66783.1 and 66784.

SEC. 3. Division 31 (commencing with Section 50000) is added to the Public Resources Code, to read:

DIVISION 31. WASTE MANAGEMENT FACILITIES

50000. (a) Until a countywide integrated waste management plan of a county has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no new transfer or processing station or disposal sites approved by a city or county after January 1, 1978, shall be established in a city or county without a finding by the board, at a public meeting, that the protection of the public health, or public need and necessity, require the immediate implementation of the sites.

(b) Any site is exempt from this requirement if, prior to August 28, 1974, there is an environmental impact report notice of determination filed with the state or if a use permit or approval has been issued for the site by the city or county.

50001. No person shall establish sites for solid waste disposal, a transfer station, waste processing, or resource recovery not in conformance with the countywide integrated waste management plan approved by the California Integrated Waste Management Board. Nonprofit private resources recovery or recycling sites for neighborhood or community type activities approved by a local governmental entity are exempt from this requirement. If the board or any local governmental entity determines that a proposed site in a city or county is not in conformance with the countywide integrated waste management plan of that county, the board may, after public hearing, require conformance to the plan, or approve an amendment to the plan. Any amendment to a county solid waste management plan is subject to the requirements of former subdivision (c) of Section 66780.5 of the Government Code, as it read before January 1, 1990. No person shall establish or operate, or permit the establishment or operation of, a site which the board has determined is not in conformance with the plan. At the request of the board or any local governmental entity, the Attorney General shall bring an action to enforce this division.

50002. (a) The California Integrated Waste Management Board may, by regulation, specify classifications of solid waste facilities that are exempt from the requirements of Sections 50000 and 50001. The regulation may be adopted only if the board makes all of the following findings:

(1) The exemption is not contrary to the public interest.

(2) The quantity of solid wastes to be disposed of at each site is insignificant.

(3) The nature of the solid wastes poses no significant threat to the public health, the public safety, or the environment.

(b) The application to land of agricultural products derived from municipal sewage sludge for use as a fertilizer material, based on a finding by the board that the nature of the solid waste poses no significant threat to the public health, the public safety, or the environment, is exempt from the requirements of Sections 50000 and 50001.

SEC. 4. Section 3 of this act shall become operative only if AB 939 of the 1989–90 Regular Session is enacted and becomes operative on or before January 1, 1990.

CHAPTER 1248

An act to add and repeal Sections 17053.12 and 23608 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 17053.12 is added to the Revenue and Taxation Code, to read:

17053.12. (a) In the case of a taxpayer who donates agricultural products under Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code, for taxable years beginning on or after January 1, 1989, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039), an amount equal to 10 percent of the cost included in inventory costs under Section 263A of the Internal Revenue Code, or which would be required to be included in inventory costs under Section 263A of the Internal Revenue Code but for the exception for farming businesses contained in Section 263A(d) of the Internal Revenue Code, with respect to those agricultural products.

(b) A husband and wife shall receive only one credit under this section. If the husband and wife file separate returns, the credit may be taken by either or equally divided between them. With the exception of a husband and wife, if two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes

Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to a partner's distributive share.

(c) If the credit allowed by this section is claimed by the taxpayer, any deduction otherwise allowed under this part for that amount of the cost paid or incurred by the taxpayer which is eligible for the credit shall be reduced by the amount of the credit provided in subdivision (a).

(d) Upon receipt of the donated agricultural product, the nonprofit organization shall provide a certificate to the donor. The certificate shall contain a statement signed and dated by a person authorized by that organization that the product is donated under Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code. The certificate shall also contain the following information: the type and quantity of product donated, the name of donor or donors, and the name and address of the donee. Upon the request of the Franchise Tax Board, the taxpayer shall provide a copy of the certification to the Franchise Tax Board.

(e) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(f) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (e), until the credit has been exhausted.

SEC. 2. Section 23608 is added to the Revenue and Taxation Code, to read.

23608. (a) In the case of a taxpayer who donates agricultural products under Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code, for income years beginning on or after January 1, 1989, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036), an amount equal to 10 percent of the cost included in inventory costs under Section 263A of the Internal Revenue Code, or which would be required to be included in inventory costs under Section 263A of the Internal Revenue Code but for the exception for farming businesses contained in Section 263A(d) of the Internal Revenue Code, with respect to those agricultural products.

(b) If two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to a partner's distributive share.

(c) If the credit allowed by this section is claimed by the taxpayer, any deduction otherwise allowed under this part for that amount of

the cost paid or incurred by the taxpayer which is eligible for the credit shall be reduced by the amount of the credit provided in subdivision (a).

(d) Upon receipt of the donated agricultural product, the nonprofit organization shall provide a certificate to the donor. The certificate shall contain a statement signed and dated by a person authorized by that organization that the product is donated under Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code. The certificate shall also contain the following information: the type and quantity of product donated, the name of donor or donors, and the name and address of the donee. Upon the request of the Franchise Tax Board, the taxpayer shall provide a copy of the certification to the Franchise Tax Board.

(e) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

(f) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (e), until the credit has been exhausted.

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 1249

An act to amend Sections 4927, 4928, 4929, and 4975 of, and to add and repeal Section 4938.1 of, the Business and Professions Code, relating to business and professions, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 4927 of the Business and Professions Code is amended to read:

4927. As used in this chapter, unless the context otherwise requires:

(a) "Committee" means the Acupuncture Committee.

(b) "Board" means the Division of Allied Health Professions of the Board of Medical Quality Assurance.

(c) "Person" means any individual, organization, or corporate body, except that only individuals may be licensed under this chapter.

(d) "Acupuncturist" means an individual to whom a license has been issued to practice acupuncture pursuant to this chapter, which

is in effect and is not suspended or revoked.

(e) "Acupuncture" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion.

SEC. 2. Section 4928 of the Business and Professions Code is amended to read:

4928. There is within the jurisdiction of the board an Acupuncture Committee which consists of 11 members.

SEC. 3. Section 4929 of the Business and Professions Code is amended to read:

4929. Five members of the committee shall be acupuncturists with at least five years of experience in acupuncture and not licensed as physicians and surgeons, two members of the committee shall be physicians and surgeons licensed in this state with two years of experience in acupuncture, and four members shall be public members who do not hold a license or certificate as a physician and surgeon or acupuncturist.

The Governor shall appoint the five acupuncturist members qualified as provided in this section, who shall be appointed to represent a cross section of the cultural backgrounds of licensed members of the acupuncturist profession, two of the public members, and the two licensed physician and surgeon members qualified as provided in this section. All members appointed to the committee by the Governor shall be subject to confirmation by the Senate. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983. Any member of the committee may be removed by the appointing power for neglect of duty, misconduct, or malfeasance in office, after being provided with a written statement of the charges and an opportunity to be heard.

SEC. 4. Section 4938.1 is added to the Business and Professions Code, to read:

4938.1. Notwithstanding subdivision (c) of Section 4938, on and after July 1, 1990, the examination specified in that subdivision shall be administered by independent consultants with technical advice and assistance from the members of the committee. In selecting an independent consultant, the committee shall utilize the advisory services of the central testing unit of the department.

This section shall be operative until January 1, 1995, and, on that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 4975 of the Business and Professions Code is amended to read:

4975. An acupuncture 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 acupuncturists are in compliance with the Moscone-Knox Professional Corporation Act, this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

With respect to an acupuncture corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Acupuncture Committee.

SEC. 6. The sum of two hundred seventy-nine thousand dollars ($279,000) is hereby appropriated from the Acupuncture Fund to the Acupuncture Committee for the purpose of funding activities of the committee during the period of January 1, 1990, to June 30, 1990, inclusive.

CHAPTER 1250

An act to amend Sections 11550, 11552, 11553, 11553.5, 11554, 11555, 11556, 11560, 11563.1, 11563.7, 11563.8, 11563.9, and 11564 of the Government Code, relating to state employees.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 11550 of the Government Code is amended to read:

11550. Effective January 1, 1988, an annual salary of ninety-one thousand fifty-four dollars ($91, 054) shall be paid to each of the following:

(a) Director of Finance.
(b) Secretary of Business, Transportation and Housing Agency.
(c) Secretary of Resources Agency.
(d) Secretary of Health and Welfare Agency.
(e) Secretary of State and Consumer Services Agency.
(f) Director of Industrial Relations.
(g) Commissioner of the California Highway Patrol.
(h) Secretary of Youth and Adult Correctional Agency.
(i) Director of Food and Agriculture.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 2. Section 11552 of the Government Code is amended to read:

11552. Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:

(a) Superintendent of Banks.
(b) Commissioner of Corporations.
(c) Insurance Commissioner.
(d) Director of Transportation.
(e) Real Estate Commissioner.
(f) Savings and Loan Commissioner.
(g) Director of Social Services.
(h) Director of Water Resources.
(i) Director of Corrections.
(j) Director of General Services.
(k) Director of Motor Vehicles.
(*l*) Director of the Youth Authority.
(m) Executive Officer of the Franchise Tax Board.
(n) Director of Employment Development.
(o) Director of Alcoholic Beverage Control.
(p) Director of Housing and Community Development.
(q) Director of Alcohol and Drug Abuse.
(r) Director of the Office of Statewide Health Planning and Development.
(s) Director of the Department of Personnel Administration.
(t) Chairperson and Member of the Board of Equalization.
(u) Director of Commerce.
(v) State Director of Health Services.
(w) Director of Mental Health.
(x) Director of Developmental Services.
(y) State Public Defender.
(z) Director of the California State Lottery.
(aa) Director of Fish and Game.
(ab) Director of Parks and Recreation.
(ac) Director of Rehabilitation.
(ad) Director of Veterans Affairs.
(ae) Director of Consumer Affairs.
(af) Director of Forestry and Fire Protection.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 3. Section 11553 of the Government Code is amended to read:

11553. Effective January 1, 1988, an annual salary of eighty-one thousand six hundred thirty-five dollars ($81,635) shall be paid to each of the following:

(a) Chairperson of the Unemployment Insurance Appeals Board.
(b) Chairperson of the Agricultural Labor Relations Board.
(c) President of the Public Utilities Commission.
(d) Chairperson of the Fair Political Practices Commission.
(e) Chairperson of the Energy Resources Conservation and Development Commission.
(f) Chairperson of the Public Employment Relations Board.
(g) Chairperson of the Workers' Compensation Appeals Board.
(h) Administrative Director of the Division of Industrial Accidents.
(i) Chairperson of the State Water Resources Control Board.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 4. Section 11553.5 of the Government Code is amended to read:

11553.5. Effective January 1, 1988, an annual salary of seventy-nine thousand one hundred twenty-two dollars ($79,122) shall be paid to the following:

(a) Member of the Agricultural Labor Relations Board.
(b) Member of the State Energy Resources Conservation and Development Commission.
(c) Member of the Public Utilities Commission.
(d) Member of the Public Employment Relations Board.
(e) Member of the Unemployment Insurance Appeals Board.
(f) Member of the Workers' Compensation Appeals Board.
(g) Member of the State Water Resources Control Board.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general cost-of-living salary increases provided for state employees during that fiscal year.

SEC. 5. Section 11554 of the Government Code is amended to read:

11554. Effective January 1, 1988, an annual salary of seventy-five thousand three hundred fifty-four dollars ($75,354) shall be paid to each of the following:

(a) Director of Conservation.
(b) Director of the Department of Economic Opportunity.
(c) State Architect.
(d) Director of Fair Employment and Housing.
(e) Director of the Office of Emergency Services.
(f) Director of the Department of Aging.
(g) State Fire Marshal.

The annual compensation provided by this section shall be

increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 6. Section 11555 of the Government Code is amended to read:

11555. Effective January 1, 1988, an annual salary of seventy-one thousand five hundred eighty-seven dollars ($71,587) shall be paid to the following:

(a) Chairperson of the Board of Prison Terms.

(b) Chairperson of the Youthful Offender Parole Board.

(c) Chairperson of the Occupational Safety and Health Appeals Board.

(d) Chairperson of the California Waste Management Board.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 7. Section 11556 of the Government Code is amended to read·

11556. Effective January 1, 1988, an annual salary of sixty-nine thousand seventy-six dollars ($69,076) shall be paid to each of the following:

(a) Member of the Board of Prison Terms.

(b) Member of the Youthful Offender Parole Board.

(c) Member of the Occupational Safety and Health Appeals Board.

(d) Director of Boating and Waterways.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 8. Section 11560 of the Government Code is amended to read:

11560. Effective January 1, 1988, an annual salary of thirty-four thousand five hundred thirty-seven dollars ($34,537) shall be paid to the Chairperson of the Narcotic Addict Evaluation Authority.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 9. Section 11563.1 of the Government Code is amended to

read:

11563.1. Effective January 1, 1988, an annual salary of thirty thousand one hundred forty-one dollars ($30,141) shall be paid to each member of the Narcotic Addict Evaluation Authority.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 10. Section 11563.7 of the Government Code is amended to read:

11563.7. Effective January 1, 1988, an annual salary of twenty-five thousand one hundred eighteen dollars ($25,118) shall be paid to each member of the State Personnel Board.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 11. Section 11563.8 of the Government Code is amended to read:

11563.8. Effective January 1, 1988, an annual salary of thirteen thousand one hundred eighty-seven dollars ($13,187) shall be paid to the President of the Traffic Adjudication Board.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 12. Section 11563.9 of the Government Code is amended to read:

11563.9. Effective January 1, 1988, an annual salary of twelve thousand five hundred fifty-nine dollars ($12,559) shall be paid to each member of the Traffic Adjudication Board.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 13. Section 11564 of the Government Code is amended to read:

11564. Effective January 1, 1988, an annual salary of twenty-five thousand one hundred eighteen dollars ($25,118) shall be paid to each member of the State Air Resources Board, provided each member devotes a minimum of 60 hours per month to state board

work. The salary shall be reduced proportionately if less than 60 hours per month is devoted to state board work.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

CHAPTER 1251

An act to amend Sections 44520 and 44548 of, to add Section 40448.6 to, and to add and repeal Section 40448.7 of, the Health and Safety Code, relating to environmental quality.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 40448.6 is added to the Health and Safety Code, to read:

40448.6. The Legislature hereby finds and declares all of the following:

(a) It is necessary to increase the availability of financial assistance to small businesses which are subject to the rules and regulations of the south coast district, in order to minimize economic dislocation and adverse socioeconomic impacts.

(b) It is in the public interest that a portion of the funds collected by the south coast district from violators of air pollution regulations be allocated for the purpose of guaranteeing or otherwise reducing the financial risks of providing financial assistance to small businesses which face increased borrowing requirements in order to comply with air pollution control requirements.

(c) Public agencies and private lenders have a variety of methods available for providing financing assistance to small businesses and other employers, including taxable bonds, composite or pooled financing instruments, loan guarantees, and credit insurance, which could be utilized in combination with the penalties collected by the south coast district to expand the availability and reduce the cost of financing assistance.

(d) The California Pollution Control Financing Authority has funds set aside from previous bond issues, which could be used to guarantee the issuance of bonds or other financing for small businesses for the purchase and installation of pollution control equipment.

(e) The Office of Small Business in the Department of Commerce, through the regional small business development

corporations, has the ability to provide state loan guarantees and technical assistance to small businesses needing financial assistance.

(f) The Job Training Partnership Division of the Employment Development Department makes funds available for job training programs, including funds for dislocated workers, through the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(g) It is the policy of the state that the Job Training Partnership Division of the Employment Development Department, in cooperation with the districts and the state board, are encouraged to provide job training programs for workers who, as determined by the department or the local private industry council, have been laid off or dislocated as a result of actions resulting from air quality regulations.

(h) It is the policy of the state that the California Pollution Control Financing Authority and the Office of Small Business in the Department of Commerce, in cooperation with the districts and the state board, are encouraged to provide technical and financial assistance to small businesses to facilitate compliance with air quality regulations.

SEC. 2. Section 40448.7 is added to the Health and Safety Code, to read:

40448.7. (a) The south coast district shall annually allocate to the account established pursuant to subdivision (b) not less than one million dollars ($1,000,000) of the funds received from civil and criminal penalties, out-of-court settlements, or other sources, for the purpose of guaranteeing or otherwise participating in the provision of financing assistance for lending programs of other public agencies or private lenders to small businesses for the purpose of complying with the south coast district regulations.

(b) In carrying out this section, the south coast district shall establish a special small business assistance account for the purpose of setting aside funds to be used in underwriting, guaranteeing, or otherwise participating in the provision of financing assistance by other public agencies or private lenders.

(c) In carrying out this section, and its responsibilities for the mitigation of socioeconomic impacts, the south coast district shall utilize, to the maximum extent, the financing instruments and administrative capacity of other public agencies and private lenders with respect to providing financing assistance, and shall endeavor to obtain the maximum leverage of its funds through guarantees and other forms of risk sharing with other public agencies and private lenders, in order to increase the availability of financing assistance to small businesses. The south coast district shall consider, and shall make available to public agencies and private lenders, relevant information contained in environmental and socioeconomic impact assessments conducted by it.

(d) "Small business," for the purposes of this section, has the same meaning as defined by the federal Small Business Administration.

(e) Not later than January 1, 1993, the south coast district shall

submit to the Legislature and the Governor a report which assesses the effectiveness of this section in increasing the availability of financial assistance to small businesses subject to the rules and regulations of the district.

(f) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 3. Section 44520 of the Health and Safety Code is amended to read:

44520. (a) The authority shall, 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, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business financing as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

SEC. 4. Section 44548 of the Health and Safety Code is amended to read:

44548. (a) Subject to any prior contractual obligations to any of its bondholders, the authority may establish one or more common reserve funds for any or all of its bonds in order to assist small businesses to achieve financing of pollution control facilities. For the purpose of establishing and maintaining common reserve funds as it deems necessary or desirable to secure its bonds or any issuance thereof, the authority, pursuant to its contracts with participating parties, may levy fees or other charges on, or require deposits from, participating parties receiving financing for a project under this division. The total amount of these fees, charges, and deposits with respect to a single issue of bonds shall not exceed 3 percent of the principal amount of that issue of bonds. Prior to levying any fees or charges or requiring deposits, the authority shall adopt regulations for the operation of the common reserve funds, the amounts and any payment schedule for the fees, charges, or deposits, eligibility

standards for small businesses desiring to use or benefit from the common reserve funds, and any other matters the authority deems necessary for the establishment and maintenance of common reserve funds. The regulations may provide for differential fees from participating parties based upon the size of a project financed by the authority or other factors deemed relevant by the authority, and the regulations may restrict any benefits to those eligible small businesses as may be specified in the regulations. The authority may transfer any funds available to it or set aside for its administrative expenses to any common reserve fund established under this section.

(b) The liability of any common reserve fund with respect to any single issue of bonds of the authority may not exceed one million dollars ($1,000,000).

(c) The forms of financial assistance which the authority may provide under this section include, but are not limited to, payments to reduce, but not eliminate, the interest rate on loans; payments of part or all of the cost of acquiring letters of credit, insurance, guarantees, or other forms of credit support; and payment of part or all of the authority's expenses in issuing revenue bonds. The authority may pledge any common reserve fund, not to exceed the limit specified in subdivision (b), to repay the principal of, or interest or premium on, any issue of bonds of the authority. The authority may contract with qualified financial institutions including, but not limited to, banks, investment and mortgage bankers, insurance companies, sureties, and guarantors, to provide any necessary assistance in the granting of credit for these purposes.

(d) Each common reserve fund established pursuant to this section shall be deposited in a special account which the Controller shall create. Notwithstanding any other provision of law, and subject to any requirements of federal tax law or regulations relative to maintaining the tax exempt status of the obligations of the authority, all interest or other gains earned by investment or deposit of money in the special account pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code or pursuant to any other provision of law shall be credited to, and deposited in, the account.

(e) In carrying out this section, the authority shall participate with the South Coast Air Quality Management District in providing financial assistance in its lending programs.

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

CHAPTER 1252

An act to amend Section 51012 of, and to add Sections 51015.1, 51015.2, 51015.3, 51015.4, and 51015.5 to, the Government Code, relating to pipeline safety, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 51012 of the Government Code is amended to read:

51012. The State Fire Marshal shall establish a Pipeline Safety Advisory Committee for purposes of informing local agencies and every pipeline operator of changes in applicable laws and regulations affecting the operations of pipelines and reviewing proposed hazardous liquid pipeline safety regulations adopted pursuant to Section 51011.

The committee shall be composed of eight members of whom two shall represent pipeline operators, three shall represent local agencies, one shall be a fire chief, and two shall be public members. The committee shall meet when requested by the State Fire Marshal, but not less than once a year. The members shall be paid expenses and one hundred dollars ($100) per diem for each meeting.

SEC. 2 Section 51015.1 is added to the Government Code, to read:

51015.1. (a) The State Fire Marshal shall conduct and prepare a risk assessment study dealing with intrastate and interstate hazardous liquid pipelines which are located not more than 500 feet from any rail line. The study shall include, but is not limited to, the following:

(1) Identification of each of these pipelines, its operator, geographic location, leak history, and the name of the railroad line or lines.

(2) Analysis of historic events involving reported damage to pipelines as a result of railroad train derailments. This analysis shall differentiate between main higher speed rail lines and other lines such as those within railroad yards and maintenance facilities for railroad vehicles, and other "spur" lines used for the transfer of railroad vehicles from one line or train to another.

(3) Analysis of the feasibility of requiring that railroad operators and pipeline operators prepare, subject to approval of the State Fire Marshal, a coordinated contingency plan for pipeline emergencies and derailments.

(4) Identification and analysis of any impacts which geological or seismic activities may have on the safe operation of intrastate and interstate hazardous liquid pipelines.

(5) Analysis of the feasibility of requiring the pipeline operator to

test, repair, replace, or relocate intrastate pipelines suspected of potential damage resulting from a railroad car derailment. As a minimum, that analysis shall include the examination of issues involved in obtaining necessary rights-of-way, and requirements for gaining approval of concerned local, state, and federal governmental agencies for pipeline relocation.

(6) Analysis of the feasibility of requiring pipeline operators to notify local affected fire agencies of the contents of hazardous liquid pipelines. The notification would be required anytime there is a change in material being transported.

(7) Evaluation of the best available control technology to protect public safety in the event of a pipeline emergency resulting from a railroad train derailment. The technology may include, but is not limited to:

(A) Design and placement of check or safety valves.

(B) Barriers or shields to help protect pipelines in the event of a derailment.

(C) Special testing or inspection requirements.

(8) Recommendations for improving coordination and cooperation between local agencies, the State Fire Marshal, pipeline operators, rail line operators, and the United States Department of Transportation in the preparation and implementation of contingency plans for pipeline and rail emergencies.

(b) A pipeline located in a rural area shall be excluded from this study.

(c) This risk assessment study shall be completed and submitted to the Governor and the Legislature by January 1, 1991.

(d) It is the intent of the Legislature in enacting this section that the findings and recommendations set forth in the risk assessment study will be used by the State Fire Marshal in preparing and adopting regulations provided for in Section 51015.2.

SEC 3. Section 51015.2 is added to the Government Code, to read:

51015.2. (a) The Legislature recognizes that hazardous liquid pipelines are often located alongside and in the immediate proximity of rail lines. In the event of a derailment, these pipelines may be damaged in such a fashion that their integrity is lost, making a rupture or leak more likely.

(b) In an effort to better protect public safety, the State Fire Marshal shall adopt regulations governing the construction, testing, operations, periodic inspection, and emergency operations of intrastate hazardous liquid pipelines located within 500 feet of any rail line. These regulations shall, at a minimum, include provisions dealing with the following:

(1) Minimum depth of cover for newly constructed or reconstructed pipelines.

(2) Minimum hydrostatic testing requirements for newly constructed pipelines.

(3) Minimum requirements for testing existing pipelines which

may have been affected by a derailment.

(4) Minimum requirements for periodic inspections.

(5) Minimum requirements for installation and operation of safety or check valves.

(6) Procedures for developing, testing, approving, and implementing coordinated emergency contingency plans prepared by pipeline and rail operators. These procedures shall also provide for consultation with local affected agencies, and require pipeline and rail operations to develop and implement emergency training for their employees approved by the State Fire Marshal.

SEC. 4. Section 51015.3 is added to the Government Code, to read:

51015.3. The State Fire Marshal may, in the interest of public safety, adopt emergency regulations which govern intrastate pipeline emergencies involving railroad car derailments. Any hazardous liquid pipeline located in a rural area shall be exempt from these regulations. Notwithstanding any other provision of law, these emergency regulations shall remain in effect until permanent regulations provided for in Section 51015.2 are adopted, but in no case beyond January 1, 1995.

SEC. 5. Section 51015.4 is added to the Government Code, to read:

51015.4. (a) Each operator shall, as specified in regulations provided for in subdivision (c), maintain each valve and check valve that is necessary for the safe operation of its pipeline systems in good working order at all times.

(b) Each operator shall provide protection for each valve and check valve from unauthorized operation and from vandalism.

(c) The State Fire Marshal shall adopt regulations, not later than June 30, 1991, which establish procedures for maintaining, testing, and inspecting mainline valves and check valves on intrastate hazardous liquid pipelines.

SEC. 6. Section 51015.5 is added to the Government Code, to read:

51015.5. (a) In the event of an intrastate pipeline rupture, leak, or other incident which could affect safe pipeline operation, any person who performs or intends to perform nonemergency site cleanup, repair, reconstruction, or any other alteration shall obtain prior approval from the State Fire Marshal.

(b) Approval by the State Fire Marshal of a repair plan, submitted by a pipeline operator in conformance with contingency plan requirements established by the State Fire Marshal, shall constitute prior approval to perform repairs as specified in subdivision (a).

(c) The State Fire Marshal may adopt regulations to implement subdivisions (a) and (b).

SEC. 7. The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the Interstate Pipeline Operations Account and the Intrastate Pipeline Operations Account in the California Hazardous Liquid Pipeline Safety Fund, to the State Fire

Marshal for the purposes of the study required by subdivision (a) of Section 51015.1 of the Government Code. This appropriation shall be paid for from fees assessed and collected by the State Fire Marshal from pipeline operators, and deposited in the Intrastate Pipeline Operations Account and the Interstate Pipeline Operations Account in the California Hazardous Liquid Pipeline Safety Fund pursuant to Sections 51019 and 51019.05 of the Government Code. The portion of the appropriation to be made from each account shall be equal to the ratio of the total fees deposited in that account to the total fees deposited in both accounts for the purpose of funding the study required by 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 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1253

An act to amend and renumber Section 35294.1 of, and to add Article 10.3 (commencing with Section 35294) to Chapter 2 of Part 21 of, the Education Code, relating to school safety.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Article 10.3 (commencing with Section 35294) is added to Chapter 2 of Part 21 of the Education Code, to read:

Article 10.3. School Safety Plans

35294. It is the intent of the Legislature that all California public schools, in kindergarten, and grades 1 to 12, inclusive, operated by school districts, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, and other persons who may be interested in the prevention of campus crime and violence, develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process. For the purposes of this section, law enforcement agencies include local police departments, county sheriffs' offices, school district police or security departments, probation

departments, and district attorneys' offices. For purposes of this section a "safety plan" means a plan to develop strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on the school campus.

35294.1. (a) School safety planning may include, but not be limited to:

(1) Assessing the current status of school crime committed on school campuses and at school-related functions.

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety.

(3) Developing an action plan, in conjunction with local law enforcement agencies, for implementing appropriate safety strategies and programs and determining the fiscal impact of executing the strategies and programs. The action plan may identify available resources which will provide for implementation of the plan.

(b) Existing schoolsite councils may be responsible for developing a safety plan. In any event, the plan may be developed with the participation of teachers, classified employees, parents, law enforcement, school administrators, and, if deemed appropriate, students.

(c) It is the intent of the Legislature that schools develop school safety plans using existing resources, including the materials and services of the School Safety Partnership, pursuant to Chapter 2.5 (commencing with Section 32260) of Part 19. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled "Safe Schools: A Planning Guide for Action" in conjunction with developing their plan for school safety.

(d) It is the intent of the Legislature that schools shall not contract with private consultants to develop school safety plans.

(e) Grants to assist schools in implementing their school safety plan shall be made available through the School Safety Partnership as authorized by Section 32262 of the Education Code.

35294.3. The Department of Justice and the State Department of Education, in accordance with Section 32262, shall contract with one professional law enforcement trainer and one professional educator trainer, respectively, to coordinate and present statewide workshops for school districts, county offices of education, and schoolsite personnel, and in particular school principals, to assist them in the development of their respective school safety plans. The Department of Justice and the State Department of Education shall work in cooperation with regard to the workshops coordinated and presented pursuant to these two contracts. The enactment of this section of this act shall be subject to the availability of funds in the Budget Act of 1990.

SEC. 2. Section 35294.1 of the Education Code, as added by Chapter 92 of the Statutes of 1989, is amended and renumbered to read:

35294.5. (a) The governing board of a school district, on behalf of one or more schools within the district that have developed a school safety plan, may apply to the Superintendent of Public Instruction for a grant to implement school safety plans. The School Safety Partnership shall award grants for school safety plans that include, but are not limited to, the following criteria:

(1) Assessment of the recent incidence of crime committed on the school campus.

(2) Identification of appropriate strategies and programs that will provide or maintain a high level of school safety.

(3) Development of an action plan, in conjunction with local law enforcement agencies, for implementing appropriate safety strategies and programs, and determining the fiscal impact of executing the strategies and programs. The action plan shall identify available resources which will provide for implementation of the plan.

(b) In the 1989–90, 1990–91, and 1991–92 fiscal years, the Superintendent of Public Instruction shall award grants pursuant to this section to school districts for the implementation of individual school safety plans in an amount not to exceed five thousand dollars ($5,000) for each school. No grant shall be made unless the school district makes available, for purposes of implementing the school safety plans, an amount of funds equal to the amount of the grant. Grants should be awarded through a competitive process, based upon criteria including, but not limited to, the merit of the proposal and the need for imposing school safety, based on school crime rates.

(c) Any school receiving a grant under this section shall submit to the Superintendent of Public Instruction verified copies of its schoolsite crime report annually for three consecutive years following the receipt of the grant to study the impact of the implementation of the school safety plan on the incidence of crime on the campus of the school.

SEC. 4. Section 35294.3 of the Education Code shall be operative only to the extent funds are made available in the annual Budget Act for purposes of that section.

CHAPTER 1254

An act to amend Sections 25143.2, 25250.1, 25250.5, 25250.7, 25250.11, 25250.16, 44320, 44322, and 44323 of the Health and Safety Code, relating to the environment.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to the requirements of this chapter which apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivision (e), any recyclable material is not a waste under this chapter when the material can be shown to be recycled by any of the following methods:

(1) Used or reused as an ingredient in an industrial process to make a product, if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products, if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivisions (b), (d), and (e), any recyclable material may be recycled at a facility which is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter. A waste subject to this paragraph is exempt from this chapter to the same extent the waste is exempt from subsections (q), (r), and (s) of Section 6924 of Title 42 of the United States Code.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within 90 days of its generation.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivision (e), any recyclable material which is a non-RCRA hazardous waste, as defined in Section 25117.9, is not a waste under this chapter if the material meets any of the following requirements:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product, which has been processed from a

hazardous waste, or which has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product contains no hazardous constituents, other than those for which the material is being recycled.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent which is managed by the owner or operator of a refinery which is processing primarily crude oil and which is not subject to permit requirements for recycling of used oil, or a public utility, or a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and which meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler which complies with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel

(ii) The material is either managed at the site where it was generated or managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator.

(iii) The material contains no hazardous constituents other than those for which the material is being recycled.

(3) The material is transported between locations operated by the same generator, if the material is recycled at the last location and is not handled at any interim location not operated by the generator. If requested by the department or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(4) The material is transferred between locations operated by the same generator, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(A) The material is transferred by employees of the generator in vehicles under the control of the person or by a registered hazardous waste hauler under contract to the generator.

(B) The material is not handled at any interim location not operated by the generator.

(C) The material is not held at any publicly accessible interim location for more than four hours.

(D) The material is managed in compliance with the

requirements of this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by the person. Upon receipt of the material at the last location operated by the generator, the material shall be deemed to have been generated at that location.

(E) If requested by the department, or by any law enforcement official, a generator handling material subject to this paragraph shall, within 15 days of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(5) The material is both transported and used or reused, as an ingredient in an industrial process to make a product, if the material is not treated before that use or reuse.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), or even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials used in a manner constituting disposal, or used to produce products that are applied to the land including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(2) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under paragraph (1) of subdivision (c) or subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(3) Materials accumulated speculatively.

(4) Materials determined to be inherently waste like pursuant to regulations adopted by the department.

(5) Used or spent etchants, stripping solutions, and plating solutions, which are transported to an offsite facility operated by a person other than the generator and which conform to either of the following:

(A) Meet a characteristic or a criterion of a hazardous waste established by the Environmental Protection Agency or the department.

(B) Are listed by the Environmental Protection Agency or the department as a hazardous waste.

(6) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil meets the definition of recycled oil contained in subdivision (c) of Section 25250.1.

(B) The used oil is exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d) or paragraph (4) of subdivision (d) of this section, or, under subdivision (e) of Section 25250.1, or under Section 25250.3.

(C) The used oil is used or reused on the site where it was generated or is exempt under paragraph (3) of subdivision (d) of this section and, in either situation, is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel, unless the used oil is exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently waste like pursuant to regulations adopted by the department.

(f) This section does not limit, abridge, or supersede any authority granted to the department pursuant to Section 25143.

(g) If the department brings an action to enforce this chapter, any person subject to the action who claims that a certain recyclable material is not a waste or is excluded, exempt, or conditionally exempt, from regulation under this chapter, shall demonstrate to the department that there is a known market or disposition for the material, and that the requirements of any exemption, exclusion, or conditional exemption from this chapter are met, by providing appropriate documentation to demonstrate that the material is not a waste or is excluded, exempt, or conditionally exempt, from regulation. Any person subject to an enforcement action and making this claim shall provide to the department, upon request, the name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material, and any other information related to the management of the material requested by the department. Any owner or operator of a facility subject to an action to enforce this chapter who claims to be recycling materials shall show that the facility has the necessary equipment to recycle the material.

SEC. 2. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. As used in this article, the following terms have the following meanings:

(a) "Used oil" means any of the following:

(1) Any oil that has been refined from crude oil, and has been used, and, as a result of use, has been contaminated with physical or chemical impurities.

(2) Any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination with nonhazardous impurities such as dirt and water, is no longer useful to the original purchaser.

(3) Spent lubricating fluids which have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine.

(4) Spent industrial oils, including compressor, turbine, and bearing oil, hydraulic oil, metal-working oil, refrigeration oil, and

railroad drainings.

(5) Contaminated fuel oil with a flashpoint equal to or greater than 100°F.

"Used oil" does not include oil which has a flashpoint below 100°F or which has been intentionally mixed with hazardous waste, other than minimal amounts of vehicle fuel. "Used oil" also does not include oil which contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater. Used oil containing more than 1,000 ppm total halogens shall also meet the Environmental Protection Agency requirements listed in paragraph (c) of Section 266.40 (excluding the exception referenced to paragraph (d)) of Title 40 of the Code of Federal Regulations.

(b) "Board" means the California Waste Management Board.

(c) "Recycled oil" means any oil, produced from used oil, which has been prepared for reuse and which achieves minimum standards of purity, in liquid form, as established by the department. This subdivision does not apply to oil which is to be disposed. The following standards of purity are in effect unless the department, by regulation, establishes more stringent standards:

(1) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products.

(2) Lead: 100 ppm or less prior to January 1, 1988; 50 ppm or less on and after January 1, 1988.

(3) Arsenic: 5 ppm or less.

(4) Chromium: 10 ppm or less.

(5) Cadmium: 2 ppm or less.

(6) Total halogens: 3,000 ppm or less, except that the regulations of the Environmental Protection Agency regarding used oil containing more than 1,000 ppm total halogens, as provided in paragraph (c) of Section 266.40 (excluding the exception referenced to paragraph (d)) of Title 40 of the Code of Federal Regulations (50 Fed. Reg. 49205) shall be met.

(7) Polychlorinated biphenyls (PCBs): less than 2 ppm.

Compliance with these standards shall not be met by blending or diluting used oil with crude or virgin oil and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department.

(d) The standards set in subdivision (c) include the only concentrations allowed above the criteria adopted pursuant to Section 25141.

(e) Used oil which meets the standards set in subdivision (c), is not hazardous pursuant to the criteria adopted pursuant to Section 25141 for constituents other than those listed in subdivision (c), and is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations is not regulated by the department, unless otherwise specified. Any person who generates used oil, and who claims that the oil is exempt from regulation pursuant to this subdivision, shall notify the department, in writing, of that claim and

shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator and user of the used oil to prove that the oil met those standards and criteria.

(f) "Used oil recycling facility" means a facility which reprocesses or rerefines used oil.

(g) "Used oil storage facility" means a storage facility, as defined in subdivision (a) of Section 25123.3, which stores used oil.

(h) "Used oil transfer facility" means a transfer facility, as defined in subdivision (c) of Section 25123.3, that either stores used oil for periods greater than 144 hours or that transfers used oil from one container to another.

SEC. 3. Section 25250.5 of the Health and Safety Code is amended to read:

25250.5. (a) Disposal of used oil by discharge to sewers, drainage systems, surface or groundwaters, watercourses, or marine waters; by incineration or burning as fuel; or by deposit on land, is prohibited, unless authorized under other provisions of law.

(b) The use of used oil, recycled oil, or oil exempted pursuant to subdivision (e) of Section 25250.1 as a dust suppressant or weed control agent is prohibited unless the oil meets the requirements of subdivision (e) of Section 25250.1 and additionally meets all of the following standards:

(1) Lead is less than 5 ppm.

(2) Cadmium is less than 1 ppm.

(3) Total regulated halogens listed by the Environmental Protection Agency or the department as a hazardous waste are 100 ppm or less.

SEC. 4. Section 25250.7 of the Health and Safety Code is amended to read:

25250.7. No person who generates, stores, or transfers used oil shall intentionally contaminate used oil with other hazardous waste, other than minimal amounts of vehicle fuel.

SEC. 5. Section 25250.11 of the Health and Safety Code is amended to read:

25250.11. (a) Any person who receives used oil from consumers or other used oil generators, is exempt from hazardous waste facility permit requirements imposed pursuant to Article 9 (commencing with Section 25200) with respect to any location at which used oil is received if all of the following conditions are met:

(1) Each shipment of used oil received does not exceed 20 gallons, and the contents of any single container does not exceed five gallons.

(2) Other than lead-acid storage batteries and antifreeze, no other hazardous wastes are received at the location.

(3) The used oil is transported by the generator of the used oil.

(b) Any person who transports used oil is exempt from the requirements of subdivisions (a) and (e) of Section 25163 and from the requirements of Section 25160 concerning the possession of a manifest while transporting used oil to a location described in

subdivision (a) if all of the following conditions are met:

(1) The contents of any single container do not exceed five gallons.

(2) Each shipment of used oil does not exceed 20 gallons.

(3) The person transporting the used oil had generated the oil.

SEC. 6. Section 25250.16 of the Health and Safety Code is amended to read:

25250.16. No person may recycle used oil without obtaining authorization from the department pursuant to Section 25200 or 25200.5, or unless exempted pursuant to Section 25143.2.

SEC. 7. Section 44320 of the Health and Safety Code is amended to read:

44320. This part applies to the following:

(a) Any facility which manufactures, formulates, uses, or releases any of the substances listed pursuant to Section 44321 or any other substance which reacts to form a substance listed in Section 44321 and which releases or has the potential to release total organic gases, particulates, or oxides of nitrogen or sulfur in the amounts specified in Section 44322.

(b) Except as provided in Section 44323, any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district. A district may, with the concurrence of the state board, waive the application of this part pursuant to this subdivision for any facility which the district determines will not release any substance listed pursuant to Section 44321 due to a shutdown or a process change.

SEC. 8. Section 44322 of the Health and Safety Code is amended to read:

44322. This part applies to facilities specified in subdivision (a) of Section 44320 in accordance with the following schedule:

(a) For those facilities that release, or have the potential to release, 25 tons per year or greater of total organic gases, particulates, or oxides of nitrogen or sulfur, this part becomes effective on July 1, 1988.

(b) For those facilities that release, or have the potential to release, more than 10 but less than 25 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, this part becomes effective July 1, 1989.

(c) For those facilities that release, or have the potential to release, less than 10 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, the state board shall, on or before July 1, 1990, prepare and submit a report to the Legislature identifying the classes of those facilities to be included in this part and specifying a timetable for their inclusion.

SEC. 9. Section 44323 of the Health and Safety Code is amended to read:

44323. A district may prepare an industrywide emissions inventory and health risk assessment for facilities specified in subdivision (b) of Section 44320 and subdivisions (a) and (b) of

Section 44322, and shall prepare an industrywide emissions inventory for the facilities specified in subdivision (c) of Section 44322, in compliance with this part for any class of facilities that the district finds and determines meets all of the following conditions:

(a) All facilities in the class fall within one four-digit Standard Industrial Classification Code.

(b) Individual compliance with this part would impose severe economic hardships on the majority of the facilities within the class.

(c) The majority of the class is composed of small businesses.

(d) Releases from individual facilities in the class can easily and generically be characterized and calculated.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1255

An act to amend Section 65302 of, and to repeal Section 65919.12 of, the Government Code relating to local agencies.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject

to flooding and shall be reviewed annually with respect to those areas. The land use element shall designate, in a land use category that provides for timber production, those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element as provided in Article 10.6 (commencing with Section 65580).

(d) A conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. The conservation element may also cover:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

The conservation element shall be prepared and adopted no later than December 31, 1973.

(e) An open-space element as provided in Article 10.5 (commencing with Section 65560).

(f) A noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight online railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport

operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (L_{dn}). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

(g) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

At least 45 days prior to adoption or amendment of the safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to

final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of its adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

SEC. 2. Section 65919.12 of the Government Code is repealed.

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

CHAPTER 1256

An act to amend Sections 33128, 37670, 41320.1, 42810, 44670.4, 44670.9, 44671, 44671.1, 44680 4, 46170, 46190, 46205, 46300, 48000, 48010, 48011, 85410, 99200, 99201, and 99205 of, to add Sections 41610, 42289.1, 42289.2, 42289.3, and 42289.4 to, to add Article 8 (commencing with Section 39440) to Chapter 3 of Part 23 of, to repeal Sections 46330, 46331, 46332, 46333, and 46340 of, and to repeal Article 1 (commencing with Section 37000) of Chapter 1 of Part 22 of, the Education Code, to add Section 10247 to, and to repeal Section 37557 of, the Government Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 33128 of the Education Code is amended to read·

33128. The standards and criteria to be adopted by the State Board of Education pursuant to Section 33127 shall include, but not be limited to, comparisons and reviews of the following:

(a) Average daily attendance.
(b) Revenues and expenditures.
(c) Reserves and fund balance.
(d) Multi-year commitments.

SEC. 2. Article 1 (commencing with Section 37000) of Chapter 1 of Part 22 of the Education Code is repealed.

SEC. 3. Section 37670 of the Education Code is amended to read:

37670. (a) Notwithstanding any other provision of law, any school district may operate a program of year-round scheduling at one or more schools within the district for as few as 163 days in each fiscal year, so long as the number of annual instructional minutes is not less than that of schools of the same grade levels utilizing the traditional school calendar.

(b) All certificated employees under this program, except those serving under an administrative or supervisorial credential and who are assigned full time to a school in positions requiring qualifications for certification, shall work the same number of days and shall increase the number of minutes worked daily on a uniform basis.

(c) A program conducted pursuant to this section shall be eligible for apportionment from the State School Fund

SEC. 4. Article 8 (commencing with Section 39440) is added to Chapter 3 of Part 23 of the Education Code, to read:

Article 8. Joint Occupancy

39440. Any school district may enter into leases and agreements relating to real property and buildings to be used jointly by the district and any private person, firm, or corporation pursuant to this article. As used in this article, "building" includes onsite and offsite facilities, utilities and improvements that, as agreed upon by the parties, are appropriate for the proper operation or function of the building to be occupied jointly by the district and the private person, firm, or corporation. It also includes the permanent improvement of school grounds.

Any building, or portion thereof, that is used by a private person, firm, or corporation pursuant to this section shall be subject to the zoning and building code requirements of the local jurisdiction in which the building is situated.

Section 53094 of the Government Code shall not be applicable to uses of school district property or buildings authorized by this section, except in the case of property or buildings used solely for educational purposes.

39441. (a) Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall own a site upon which a building to be used by the district and private person, firm, or corporation may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites.

(b) This section shall not apply to any building to be acquired by

purchase pursuant to Article 2 (commencing with Section 17810) of Chapter 26 of Part 10.

39442. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 66 years.

39444. The governing board of a school district may let to any private person, firm, or corporation, any real property that belongs to the district if the instrument by which the property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the joint use of the school district and the private person, firm, or corporation during the term of the agreement.

However, title to that portion of the building to be occupied by the private individual, firm, or corporation shall remain exclusively the personal property of the private party during the term of the lease and the title to that portion of the building to be occupied by the district shall vest in the district upon completion thereof and acceptance thereof by the school district. No rental fee or other charge for the use of the building shall be paid by the district.

39445. Any lease of real property by a school district to a private person, firm, or corporation pursuant to this article shall be upon the terms and conditions as the parties thereto may agree and may be entered into without complying with any provisions of this code except as provided in this article However, any lease or agreement pursuant to this article shall be subject to Article 7 (commencing with Section 35230) of Chapter 2 of Part 21.

39446. Before entering into a lease or agreement pursuant to this article, the governing board of a school district shall comply with Section 39447.

39447. For the purposes of receiving proposals for the joint occupancy of a building to be constructed on school property, the board shall, in a regular open meeting, adopt a resolution declaring its intention to consider the proposals. The resolution shall describe the proposed site on which the building to be jointly occupied is to be constructed in a manner so as to identify the site, shall specify the intended use of that portion of the building that is to be occupied by the district, and shall fix a time not less than 90 days thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which meeting the board shall receive and consider all plans or proposals submitted.

39448. Notice of adoption of the resolution and the time and place of holding the meeting shall be given by publishing the resolution at least once a week for three weeks in a newspaper of general circulation published in the district if there is one, or if none is published in the district, in a newspaper published in the county.

39449. At the time and place fixed in the resolution for the meeting of the governing board, the board shall meet and consider all plans and proposals submitted for the joint occupancy of the building to be constructed on the proposed school site.

39450. (a) After considering all proposals submitted, the

governing board of the school district may, subject to Section 39451, select the plan or proposal that best meets the needs of the school district and enter into a contract incorporating that plan or proposal either as submitted or as revised by the governing board of the school district. However, the governing board shall not approve any proposal nor enter into a lease or contract incorporating a proposal until the governing board has submitted the proposal to the State Board of Education, and the State Board of Education has approved the proposal. The State Board of Education shall, within 45 days of the date of submission, notify the governing board of its approval or disapproval.

(b) The governing board shall require any person, firm, or corporation with whom it enters into a lease or agreement pursuant to this article to file one of the following, as determined by the governing board:

(1) A bond for the performance of the lease or agreement.

(2) An irrevocable letter of credit issued by a state or national bank for the performance of the lease or agreement.

39451 Any building constructed for the use of a school district pursuant to this article is subject to Sections 39140 to 39155, inclusive, and all other provisions of this code relating to the physical structure of school buildings.

39452. The provisions of this article prevail over any provisions of law that conflict therewith.

SEC. 5. Section 41320.1 of the Education Code is amended 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 and the district has adequate fiscal systems and controls in place. Before the district repays it loan, including interest, the recipient of the loan shall select an auditor from a list established by the superintendent and the Controller to conduct an audit of its fiscal systems. If the fiscal systems are deemed to be inadequate, the superintendent may retain the trustee until the deficiencies are corrected. The cost of this audit and any additional cost of the trustee shall be borne by the district.

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, the amount 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.

(e) For all purposes of errors and omissions liability insurance, the trustee appointed pursuant to this section shall be deemed to be an employee of the local education agency to which he or she is assigned.

SEC. 6. Section 41610 is added to the Education Code, to read:

41610. (a) Notwithstanding any other provision of law, commencing with the 1988–89 fiscal year any school district that has discovered an error in the attendance accounting computer program that has caused it to overstate its average daily attendance is not required to amend its prior years' reports, if the independent audit for the 1987–88 fiscal year or any previous fiscal year did not reveal the error.

Commencing with the 1989–90 fiscal year, no school district is entitled to a declining enrollment adjustment under Section 42238.5 or 42251, or any other provision, for a decline in average daily attendance that is a result of an overstatement of the 1987–88 fiscal year average daily attendance.

(b) Notwithstanding any other provision of law, any school

district that has experienced all of the following shall not have its revenue limit apportionment adjusted for the 1988–89 fiscal year or any prior fiscal year as a result of any attendance reporting error occurring in the 1987–88 fiscal year or any prior fiscal year:

(1) The district has used an attendance accounting computer system since the 1978–79 school year.

(2) The attendance accounting system has been audited during the annual financial audit since the 1979–80 fiscal year and, despite the annual audits, has been found to contain an error.

(3) The district has experienced declining enrollment from the 1987–88 fiscal year to the 1988–89 fiscal year.

(c) Any school district for which subdivision (b) is applicable shall calculate its declining enrollment adjustment pursuant to Section 42251 based upon the corrected average daily attendance for the 1987–88 fiscal year rather than based upon the average daily attendance originally reported for the 1987–88 fiscal year.

SEC. 7. Section 42289.1 is added to the Education Code, to read:

42289.1. (a) Notwithstanding any other provision of law, for the 1988–89 fiscal year and each fiscal year thereafter, after calculating the increase in funding amounts specified in Section 42287, the Superintendent of Public Instruction shall increase the funding amounts specified in Sections 42281, 42282, and 42284, by the sum of paragraphs (1) and (2):

(1) Compute the product of subparagraphs (A) and (B):

(A) The amount per unit of average daily attendance computed pursuant to subdivision (g) of Section 42240.

(B) The average daily attendance for each necessary small school and necessary small high school for which the district receives funding in the current fiscal year pursuant to Section 42281, 42282, or 42284, as appropriate.

(2) Commencing in the 1990–91 fiscal year and each fiscal year thereafter, the amount computed pursuant to paragraph (1) shall be increased by the percentage cost-of-living increase given to school district revenue limits for the then current fiscal year.

SEC. 8. Section 42289.2 is added to the Education Code, to read:

42289.2. (a) Notwithstanding any other provision of law, for the 1989–90 fiscal year and each fiscal year thereafter, after calculating the increase in funding amounts specified in Section 42287, the Superintendent of Public Instruction shall increase the funding amounts specified in Sections 42281, 42282, and 42284, by the sum of paragraphs (1) and (2):

(1) Compute the product of subparagraphs (A) and (B):

(A) The amount per unit of average daily attendance computed pursuant to subdivision (e) of Section 54060.5.

(B) The average daily attendance for each necessary small school and necessary small high school for which the district receives funding in the current fiscal year pursuant to Section 42281, 42282, or 42284, as appropriate.

(2) Commencing in the 1990–91 fiscal year and each fiscal year

thereafter, the amount computed pursuant to paragraph (1) shall be increased by the percentage cost-of-living increase given to school district revenue limits for the then current fiscal year.

SEC. 9. Section 42289.3 is added to the Education Code, to read:

42289.3. (a) Notwithstanding any other provision of law, for the 1989–90 fiscal year and each fiscal year thereafter, after calculating the increase in funding amounts specified in Section 42287, the Superintendent of Public Instruction shall increase the funding amounts specified in Sections 42281, 42282, and 42284, by the sum of paragraphs (1) and (2):

(1) Compute the product of subparagraphs (A) and (B):

(A) The amount per unit of average daily attendance computed pursuant to subdivision (e) of Section 54060.6.

(B) The average daily attendance for each necessary small school and necessary small high school for which the district receives funding in the current fiscal year pursuant to Section 42281, 42282, or 42284, as appropriate.

(2) Commencing in the 1990–91 fiscal year and each fiscal year thereafter, the amount computed pursuant to paragraph (1) shall be increased by the percentage cost-of-living increase given to school district revenue limits for the then current fiscal year.

SEC. 10. Section 42289.4 is added to the Education Code, to read:

42289.4 (a) Notwithstanding any other provision of law, for the 1989–90 fiscal year and each fiscal year thereafter, after calculating the increase in funding amounts specified in Section 42287, the Superintendent of Public Instruction shall increase the funding amounts specified in Sections 42281, 42282, and 42284, by the sum of paragraphs (1) and (2):

(1) Compute the product of subparagraphs (A) and (B):

(A) The amount per unit of average daily attendance computed pursuant to subdivision (b) of Section 54060.7.

(B) The average daily attendance for each necessary small school and necessary small high school for which the district receives funding in the current fiscal year pursuant to Section 42281, 42282, or 42284, as appropriate.

(2) Commencing in the 1990–91 fiscal year and each fiscal year thereafter, the amount computed pursuant to paragraph (1) shall be increased by the percentage cost-of-living increase given to school district revenue limits for the then current fiscal year.

SEC. 11. Section 42810 of the Education Code is amended to read:

42810. In addition to establishing or maintaining a revolving cash fund under Article 1 (commencing with Section 42800), the governing board of any school district or any county superintendent of schools 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 or county superintendent of schools shall not exceed 3 percent of the current year's instructional supply budget.

The governing board of any school district or any county superintendent of schools 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. 12. Section 44670.4 of the Education Code is amended to read:

44670.4. (a) At each school that establishes a school development plan authorized by this chapter, annual school improvement objectives shall be developed by a process that involves classroom teachers selected by teachers; other school personnel, including instructional paraprofessionals; the principal; parents; other community members; and, in secondary schools, pupils The improvement objectives shall address, but need not be limited to, the objectives specified in Section 44670.3 and the capacity of school personnel to provide the services required of them. At the secondary school level, the process shall include teacher representation from each of the major academic subject areas provided by the school.

(b) At both the elementary and secondary school levels, school development plans shall do all of the following:

(1) Address each of the subject areas specified in Section 51210 or Section 51220, provided that different subject matter areas may be emphasized in different years.

(2) Specify how services available through subject matter projects established pursuant to the California Writing Project created pursuant to Chapter 162 of the Statutes of 1980, the California Mathematics Project created pursuant to Chapter 196 of the Statutes of 1982, and the California Science Project created pursuant to Section 52955, and pursuant to Chapter 5 (commencing with Section 99200) of Part 65 shall be used to meet the objectives specified in Section 44670.3.

SEC. 13. Section 44670.9 of the Education Code is amended to read:

44670.9. A committee created pursuant to subdivision (b) of Section 44670.5 may request of the school district governing board funding to implement a school development plan. The request shall consist of a three-year school development plan to meet school improvement objectives established pursuant to Section 44670.4 and Section 44670.5. School development plans shall describe all of the following: (a) the specific subject matter areas addressed by the plan; (b) professional development objectives and steps necessary to achieve such objectives including intended outcomes; (c) how any staff development activities, regardless of funding source, are incorporated into the plan; (d) how the school development plan is articulated with the school district development plan; (e) a budget directly related to proposed school development activities that identifies, coordinates, and makes efficient use of existing resources which will be directed to support the school development plan; and (f) procedures for ongoing evaluation and modification of the school development activities, including evaluation of the long-term impact of school development activities on pupil learning and professional growth of staff; (g) how any professional development days made available to school staff pursuant to Section 44670.6 may be used to further the professional development goals and objectives of the school.

The request shall include evidence that all of the activities in the professional development component of the school development plan meet the requirements for professional growth activities as described in Section 44277.

School development plans required by this article shall be updated annually and approved every two years, consistent with improvement objectives established annually pursuant to Sections 44670.4 and 44670.5.

SEC. 14. Section 44671 of the Education Code is amended to read:

44671. Governing boards of participating school districts shall:

(a) Establish policies and identify resources necessary to the successful implementation of this chapter, including a district development plan to meet the objectives specified in Section 44670.3. The district plan shall be designed to support coordinated professional development for administrators, teachers, other certificated personnel, and classified personnel, consistent with district development objectives. In school districts with average daily attendance greater than 2,500 pupils, professional development activities for each category of school personnel shall be designed and implemented in consultation with personnel representing that category. The district development plan shall do all of the following:

(1) Demonstrate a comprehensive approach to staff development to ensure that each of the subject areas specified in Sections 51210 and 51220 receive staff development support, provided that different subject matter areas may be emphasized in different years.

(2) Specify how services available pursuant to the California Writing Project created pursuant to Chapter 162 of the Statutes of

1980, the California Mathematics Project created pursuant to Chapter 196 of the Statutes of 1982, and the California Science Project created pursuant to Section 52955, and pursuant to Chapter 5 (commencing with Section 99200) of Part 65 shall be used to meet annual improvement objectives.

(3) Include a process for the phase-in of all schools that choose to create and implement school development plans.

(b) Develop the capacity to assist schools, upon request, to plan, implement, and evaluate school development plans. School districts may develop the capacity to assist schools in conjunction with other districts, the county superintendent of schools, institutions of higher education, local subject matter projects, or a resource agency or consortium established pursuant to Article 2 (commencing with Section 44680).

(c) To the extent the district receives funding for this purpose pursuant to Section 44671.1, allocate to any school that is not already receiving funds for school improvement pursuant to Chapter 6 (commencing with Section 52000) of Part 28, funding pursuant to this article Allocations may only be made to a school with an approved school development plan. Each district shall ensure that participating schools represent the diversity of pupil population and include schools that serve low-income and underachieving pupils.

(d) Ensure reasonable opportunities for representatives of each requesting school to meet with the governing board or its designated representatives to discuss the school development plan.

(e) Develop and disseminate to all schools criteria for school development plan approval, and approve or disapprove school development plan requests consistent with, but not limited to, district approval criteria, the school district development plan, and regulations adopted by the State Board of Education. In the event any plan is not approved, specific reasons for that action shall be communicated to the applicant school.

(f) Assist schools to identify effective practices regarding, but not limited to, the objectives described in Section 44670.3 and to identify, coordinate, and make efficient use of existing resources to support school development plans.

(g) Integrate professional development activities for instructional paraprofessionals into the career development policy of the district in order to provide incentives for instructional paraprofessionals to pursue education and training which will improve instructional skills and lead to a teaching credential.

(h) Annually certify to the Superintendent of Public Instruction the number of school development plans funded and the aggregate amount of money awarded for the plans, which may include a request for reimbursement to school districts for the administrative costs of this chapter in an amount not to exceed 5 percent of the district's apportionment. School districts may reserve up to an additional 5 percent of the school development allocation. provided the funds are used for the purposes of developing and implementing

the school district development plan pursuant to this section and for the purposes of providing assistance to schools consistent with any approved school development plan.

SEC. 15. Section 44671.1 of the Education Code is amended to read:

44671.1. The Superintendent of Public Instruction, in consultation with subject matter projects and resource agencies and consortia, as appropriate, shall:

(a) To the extent resources are available, assist district and school personnel, upon request, to design, implement, and evaluate school and district development plans authorized by this article.

(b) Ensure that procedures utilized by governing boards to approve and evaluate school development outcomes are consistent with this chapter and with standards and criteria adopted by the State Board of Education, and include in existing program quality reviews an assessment of the quality of the school development programs conducted at the school site.

(c) Annually apportion to school districts, county superintendents of schools, and other qualified entities, funds appropriated for the purposes of this article. It is the intent of the Legislature that districts effectively use existing resources for school development available through the School Improvement Program, state and federal compensatory education programs, the Mentor Teacher program and any other state and federal apportionments. It is the further intent of the Legislature that:

(1) In allocating funds among school development plans, resource agencies and consortia, and subject matter projects, priority be afforded to school level planning and subject matter projects, to the end that funding is provided according to the following ratio: for every dollar allocated to support a resource agency, at least three dollars ($3) shall be allocated to support school level planning and at least one dollar ($1) shall be allocated to support one or more subject matter projects, until all subject matter projects are implemented and adequately funded.

(2) The Legislature intends that in balancing the adequacy of resources to effectively meet the requirements of this article against funding a larger number of schools or entities, that the provision of adequate resources to satisfy the requirements of this article prevail.

(3) In determining the funding level consideration shall be given to funding levels provided in the past to support school plans and staff development.

(4) If the amount appropriated for the purposes of this article is not adequate to fund all school district and county superintendent of schools apportionments as determined pursuant to paragraph (3), the Superintendent of Public Instruction shall calculate and notify each school district and county superintendent of schools of the amount which they shall receive, based on the following criteria:

(A) No district or county superintendent of schools shall receive more than the amount determined pursuant to paragraph (3).

(B) Funds shall be apportioned in a manner to ensure that the district or county superintendent receives funds adequate to involve an entire school or schools in programs operated pursuant to this article. Funding may not be provided for only some of the enrollment of the school.

(C) The grant award for an individual school shall not be less than four thousand dollars ($4,000).

(D) In identifying school districts and county superintendents to receive apportionments pursuant to this article, the Superintendent of Public Instruction shall consider at least the following criteria:

(i) Percentage of enrollment funded through the school improvement program, such that first priority shall go to those agencies with the smallest percentage enrollment in the school improvement program.

(ii) Balanced geographic distribution.

(iii) Balanced representation of the state in terms of the race, socioeconomic status, and academic achievement of the students served.

SEC. 16. Section 44680.4 of the Education Code is amended to read:

44680.4. Each resource agency or consortium shall be advised by a resource committee representing participating agencies, and others, as appropriate. Classroom teachers selected by teachers shall comprise the majority of the resource committee members. In establishing a resource committee, the resource agency or consortium shall also include representatives, as appropriate, from all of the following:

(a) The schools served by the agency or consortium.

(b) Institutions of higher education that provide undergraduate education, maintain a department of education, and are located in, near, or adjacent to, the area served by the agency or consortium. In the event that more than one representative from institutions of higher education is selected, the additional representative or representatives shall not represent the same segment of postsecondary education.

(c) Business or industry.

(d) A local subject matter project serving the region.

SEC. 17. Section 46170 of the Education Code is amended to read:

46170. In continuation high schools and continuation education classes, a day of attendance is 180 minutes of attendance but no pupil shall be credited with more than 15 hours of attendance per school week, proportionately reduced for those school weeks having weekday holidays on which classes are not held.

SEC. 18. Section 46190 of the Education Code is amended to read:

46190. In classes for adults, a day of attendance is 180 minutes of attendance but no student shall be credited with more than 15 clock hours of attendance per school week, proportionately reduced for those school weeks having weekday holidays on which classes are not held unless he or she is enrolled in a class in elementary subjects, a

class for which high school credit is given, a class in English for foreigners, a class in citizenship, or a class in a trade or industrial subject as trade or industrial subject is defined by the State Board of Education for grades 7 to 12, inclusive.

SEC. 19. Section 46205 of the Education Code is amended to read:

46205. For purposes of this article, instructional time for school districts conducting early-late instructional programs in kindergarten and grades 1 to 8, inclusive, shall be computed by adding the total amount of instructional time provided in each portion of the early-late instructional programs to the amount of instructional time offered when all pupils in the class are scheduled to attend. It is not the intent of the Legislature to disrupt or restrict early-late instructional programs for pupils in kindergarten and grades 1 to 8, inclusive.

This section shall be applicable only if the early-late instructional program was in operation during the 1983–84 fiscal year, except that the Superintendent of Public Instruction may approve, based on educational reasons, the application of this section to programs commencing operation after the 1983–84 fiscal year.

SEC. 20. Section 46300 of the Education Code is amended to read:

46300. (a) In computing average daily attendance of a school district or county office of education, there shall be included the attendance of pupils while engaged in educational activities required of those pupils and under the immediate supervision and control of an employee of the district or county office who possessed a valid certification document, registered as required by law.

(b) For the purposes of a work experience education program in a secondary school that meets the standards of the California State Plan for Vocational Education, the term "immediate supervision," in the context of off-campus work training stations, means pupil participation in on-the-job training as outlined under a training agreement, coordinated by the school district under a state-approved plan, wherein the employer and certificated school personnel share the responsibility for on-the-job supervision. The pupil-teacher ratio in a work experience program shall not exceed 125 pupils per full-time equivalent certificated teacher coordinator. Notwithstanding Section 52033, this ratio may be waived by the State Board of Education pursuant to Article 3 (commencing with Section 33050) of Chapter 1 of Part 20 under criteria developed by the State Board of Education.

A pupil enrolled in a work experience program shall not be credited with more than one day of attendance per calendar day, and shall be a full-time student enrolled in regular classes that meet the requirements of Section 46141 or 46144.

(c) For the purposes of the rehabilitative schools, classes, or programs described in Section 48917 that require immediate supervision, the term "immediate supervision" means that the person to whom the pupil is required to report for training, counseling, tutoring, or other prescribed activity shares the

responsibility for the supervision of the pupils in the rehabilitative activities with certificated personnel of the district.

A pupil enrolled in a rehabilitative school, class, or program shall not be credited with more than one day of attendance per calendar day.

(d) For the purposes of computing the average daily attendance of pupils engaged in the educational activities required of high school pupils who are also enrolled in a regional occupational center or regional occupational program, the school district shall receive proportional average daily attendance credit for those educational activities that are less than the minimum schoolday, pursuant to regulations adopted by the State Board of Education, however, none of that attendance shall be counted for purposes of computing attendance pursuant to Section 52324.

A school district shall not receive proportional average daily attendance credit pursuant to this subdivision for any pupil in attendance for less than 145 minutes each day.

The divisor for computing proportional average daily attendance pursuant to this subdivision is 240; except, in the case of a pupil excused from physical education classes pursuant to Section 52316, the divisor is 180.

Notwithstanding any other provision of law, travel time of pupils to attend a regional occupational center or regional occupational program shall not be used in any manner in the computation of average daily attendance.

(e) In computing the average daily attendance of a school district, there shall also be included the attendance of pupils participating in an independent study program conducted pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28.

A pupil enrolled in an independent study program shall not be credited with more than one day of attendance per calendar day.

(f) For purposes of cooperative vocational education programs and community classrooms described in Section 52372.1, the term "immediate supervision" means pupil participation in paid and unpaid on-the-job experiences, as outlined under a training agreement and individualized training plans wherein the supervisor of the training site and certificated school personnel share the responsibility for the supervision of on-the-job experiences.

(g) In computing the average daily attendance of a school district, there shall be included the attendance of pupils in kindergarten after they have completed one school year in kindergarten only if the school district has on file for each of those pupils an agreement made pursuant to Section 48011, approved in form and content by the State Department of Education and signed by the pupil's parent or guardian, that the pupil shall be retained in kindergarten for not more than an additional school year.

SEC. 21. Section 46330 of the Education Code is repealed.

SEC. 22. Section 46331 of the Education Code is repealed.

SEC. 23. Section 46332 of the Education Code is repealed.

SEC. 24. Section 46333 of the Education Code is repealed.

SEC. 25. Section 46340 of the Education Code is repealed.

SEC. 26. Section 48000 of the Education Code is amended to read:

48000. (a) A child shall be admitted to a kindergarten during the first school month of a school year if the child will have his or her fifth birthday on or before December 2nd of that school year. For good cause the governing board of a school district may permit a child of proper age to be admitted to a class after the first school month of the school term.

A child who will have his or her fifth birthday on or before December 2nd may be admitted to the prekindergarten summer program maintained by the school district for pupils who will be enrolling in kindergarten in September.

(b) The governing board of any school district maintaining one or more kindergartens may admit to a kindergarten a child having attained the age of five years at any time during the school year with the approval of the parent or guardian. The governing board shall provide the parent or guardian with information as to the advantages and disadvantages and any other explanatory information as to the effects of this early admittance.

SEC. 27. Section 48010 of the Education Code is amended to read:

48010. A child shall be admitted to the first grade of an elementary school during the first month of a school year if the child will have his or her sixth birthday on or before December 2nd of that school year. For good cause, the governing board of a school district may permit a child of proper age to be admitted to a class after the first school month of the school term.

SEC. 28. Section 48011 of the Education Code is amended to read:

48011. A child who, consistent with Section 48000, has been admitted to the kindergarten maintained by a private or a public school in California or any other state, and who has completed one school year therein, shall be admitted to the first grade of an elementary school unless the parent or guardian of the child and the school district agree that the child may be retained in kindergarten for not more than an additional school year.

A child who has been lawfully admitted to a public school kindergarten or a private school kindergarten in California and who is judged by the administration of the school district, in accordance with rules and regulations adopted by the State Board of Education, to be ready for first-grade work may be admitted to the first grade at the discretion of the school administration of the district and with the consent of the child's parent or guardian if the child is at least five years of age. When a child has been legally enrolled in the public schools of another district within or out of the state, he or she may be admitted to school and placed in the grade of enrollment in the district of former attendance, at the discretion of the school administration of the district entered.

SEC. 29. Section 85410 of the Education Code is amended to read:

85410. In addition to establishing or maintaining a revolving cash

fund under Article 1 (commencing with Section 85400), the governing board of any community college district may, by resolution, establish revolving cash funds for use by presidents 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 88166. The resolution shall set forth the necessity for the revolving cash funds, the presidents and other administrative officials of the community college district designated by the governing board, the purposes for which the revolving cash funds shall be made available, and the amount of those funds. The total amount of those funds for each district shall not exceed 3 percent of the current year's instructional supply budget.

The governing board of a community college 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 those funds on a regular basis.

The revolving cash fund for supplies shall be subject to the bonding provisions of Section 85401.

SEC. 30. Section 99200 of the Education Code is amended to read:

99200. With funds appropriated therefor, and with the concurrence of the Trustees of the California State University and the Superintendent of Public Instruction, and in consultation with other institutions of higher education, as appropriate, the Regents of the University of California shall establish and maintain cooperative endeavors designed to strengthen the subject matter knowledge and enhance the instructional strategies in each subject area of teachers in the public schools. "Concurrence" for this purpose shall mean agreement on all of the following:

(a) The order in which subject matter projects shall be established pursuant to this chapter.

(b) The identification of the general concerns to be addressed by the subject matter project in each subject area.

(c) The priorities, program emphases, goals, and general objectives for the project activities pursuant to subdivision (a) of Section 99200.5.

Grants to establish local sites of statewide subject matter projects shall be available to institutions of higher education, county offices of education and school districts, or any combination thereof, with a subject matter proposal approved pursuant to this article. Once established, each subject matter project shall be administered by the University of California in cooperation with the California State University, the State Department of Education, and other institutions of higher education, as appropriate, and with the advice

of the project policy board, as established pursuant to Section 99202. Local sites of statewide subject matter projects shall be distributed throughout the state so that elementary, secondary, and postsecondary school personnel located in rural, urban, and suburban areas may avail themselves of subject matter projects.

SEC. 31. Section 99201 of the Education Code is amended to read:

99201. Priority for funding subject matter projects shall be as follows:

(a) Subject matter areas that are required as a condition of graduation from high school pursuant to Section 51225.3 and subject matter areas that are specifically addressed by subject matter projects already established in statute.

(b) Subject matter areas that coincide with state curriculum initiatives, such as state-recommended curriculum frameworks.

SEC. 32. Section 99205 of the Education Code is amended to read:

99205. Except as provided in Section 99201, this chapter does not apply to any subject matter area that is specifically addressed by one or more subject matter projects already established in statute. However, subject matter projects already established in statute shall coordinate with projects and programs established by this chapter.

SEC. 33. Section 10247 is added to the Government Code, to read:

10247. When a bill is introduced in the Legislature and each time a bill is amended, on or after January 1, 1990, the Legislative Counsel shall determine whether the bill appropriates funds that apply toward the minimum funding for school districts and community college districts required pursuant to Section 8 of Article XVI of the California Constitution. The Legislative Counsel shall make this determination known in the Legislative Counsel's Digest of the bill and shall describe in the digest the basis for this determination.

SEC. 34. Section 37557 of the Government Code is repealed.

SEC. 35. The Director of the Department of General Services, with the approval of the Director of the Department of Parks and Recreation, is hereby authorized to convey approximately 16.7 acres of land, commonly known as the Las Cruces site in Gaviota State Park, to Vista del Mar Union School District upon the terms and conditions that are in the best interest of the state, as agreed upon by the Department of Parks and Recreation and the Vista del Mar Union School District. It is not the intent of the Legislature that this action be construed as setting precedent for any future disposition of state park property.

There is excepted and reserved to the state all remains (except human remains) or artifacts of archaeological and historical significance and all deposits of minerals, including, but not limited to, all substances specified in Section 6407 of the Public Resources Code, in the trust lands, and the right to prospect for, mine, and remove those deposits from the lands.

The net proceeds of any moneys received from the disposition of this parcel shall, notwithstanding Section 5003.15 of the Public Resources Code, be deposited in the State Parks and Recreation

Fund and shall be available for appropriation for state park acquisition and for development projects in Santa Barbara County.

If the Vista del Mar Union School District, in the future, discontinues its use of the Las Cruces property and sells the property as surplus school property, the Department of Parks and Recreation shall have the right of first refusal to acquire this property on the same terms and conditions as are agreed upon between the Vista del Mar Union School District and a proposed purchaser of the property.

SEC. 36. Due to the unique circumstances regarding the proximity of a school maintained by the Vista del Mar School District to a facility that is scheduled to start up oil and gas processing imminently, the processing of which may jeopardize the health and safety of pupils and persons employed at the existing schoolsite, the Legislature hereby 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. 37. It is the intent of the Legislature that existing law which requires the Superintendent of Public Instruction to withhold from state apportionments to a school district the amount of excess paid to the district due to an error or errors made by the district shall be enforced after December 31, 1989, unless the district was relying on erroneous written advice from the State Department of Education.

SEC. 38. 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 various changes in the law relating to education made by this act may become effective as soon as possible and in order for the Vista del Mar School District to relocate a school maintained by that district to the Las Cruces site in the Gaviota State Park at the earliest time possible, it is necessary that this act take effect immediately.

CHAPTER 1257

An act to amend Sections 25112.5, 25165, and 25186.5 of, to amend and repeal Section 25200.4 of, to add Sections 25150.3, 25186.6, and 25311 to, and to add and repeal Sections 25165.1 and 25358.10 of, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. Section 25112.5 of the Health and Safety Code is amended to read:

25112.5. "Disclosure statement" means either of the following:

(a) A statement submitted to the department by an applicant, signed by the applicant under penalty of perjury, which includes all of the following information:

(1) The full name, business address, social security number, and driver's license number of all of the following:

(A) The applicant.

(B) Any officers, directors, or partners, if the applicant is a business concern.

(C) All persons or any officers, partners, or any directors if there are no officers, of business concerns holding more than 5 percent of the equity in, or debt liability of the applicant, except that if the debt liability is held by a lending institution, the applicant shall only supply the name and address of the lending institution.

(2) The following persons listed on the disclosure statement shall submit properly completed fingerprint cards:

(A) The sole proprietor.

(B) The partners.

(C) Other persons listed in subparagraph (C) of paragraph (1) and any officers or directors of the applicant company as required by the department.

(3) Fingerprint cards submitted for any person required by paragraph (2) shall only be submitted once. Fingerprint cards shall be completed and submitted for any additional person only if there is a change in the person serving in a position for which fingerprint cards are required to be submitted pursuant to paragraph (2). The department shall use the information required by paragraph (2) to positively identify the applicant.

(4) The full name and business address of any company which generates, transports, treats, stores, recycles, disposes of, or handles hazardous waste and hazardous materials in which the applicant holds at least a 5 percent debt liability or equity interest.

(5) A description of any local, state, or federal licenses, permits, or registrations for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials applied for, or possessed by the applicant, or by the applicant under any previous name or names, in the three years preceding the filing of the statement, or, if the applicant is a business concern, by the officers, directors, or partners of the business concern, including the name and address of the issuing agency.

(6) A listing and explanation of any final administrative orders or license revocations or suspensions issued or initiated by any local, state, or federal authority, in the three years immediately preceding the filing of the statement, or any civil or criminal prosecutions filed in the three years immediately preceding, or pending at the time of, the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or, if the applicant is a business concern, by

any officer, director, or partner of the business concern.

(7) A listing of any agencies outside of the state which regulate, or had regulated, the applicant's, or the applicant's under any previous name or names, generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials in the three years preceding the filing of the disclosure statement.

(8) A listing and explanation of any federal or state conviction, judgment, or settlement, in the three years immediately preceding the filing of the statement, with any remedial actions or resolutions if applicable, relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous materials by the applicant, or by the applicant under any previous name or names, or if the applicant is a business concern, by any officer, director, or partner of the business concern.

(9) A listing of all owners, officers, directors, trustees, and partners of the applicant who have owned, or been an officer, director, trustee, or partner of, any company which generated, transported, treated, stored, recycled, disposed of, or handled hazardous wastes or hazardous materials and which was the subject of any of the actions described in paragraphs (6) and (8) for the three years preceding the filing of the statement.

(b) In lieu of the statement specified in subdivision (a), a corporation, the stock of which is listed on a national securities exchange and registered under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.), or a subsidiary of such a corporation, may submit to the department copies of all periodic reports, including, but not limited to, those reports required by Section 78m of Title 15 of the United States Code and Part 229 (commencing with Section 229.10) of Chapter II of Title 17 of the Code of Federal Regulations which the corporation or subsidiary has filed with the Securities and Exchange Commission in the three years immediately preceding the submittal, if the corporation or subsidiary thereof has held a hazardous waste facility permit or operated a hazardous waste facility under interim status pursuant to Section 25200 or 25200.5 since January 1, 1984.

SEC. 2. Section 25150.3 is added to the Health and Safety Code, to read:

25150.3. The department shall adopt emergency regulations pursuant to Section 11346.1 of the Government Code which ensure protection for public and environment concerning hazardous waste held of handled at transfer facilities.

SEC. 2.5. Section 25165 of the Health and Safety Code is amended to read:

25165. (a) A hazardous waste hauler's application for original and renewal registration shall be on a form provided by the department and shall be accompanied by the appropriate fees.

(b) Any application for registration under this section shall be filed with the department.

SEC. 3. Section 25165.1 is added to the Health and Safety Code, to read:

25165.1. (a) If the applicant for an original hazardous waste hauler's registration pursuant to Section 25165 is not a federal, state, or local agency, the original application shall include a disclosure statement.

(b) The applicant for renewal of a hazardous waste hauler's registration pursuant to Section 25165 shall include a disclosure statement every second year with each subsequent renewal registration application, unless there have been any changes to the previous year's disclosure statement submittal. The department shall determine the initial schedule for the filing of a disclosure statement under this subdivision to equalize the department's administrative workload.

(c) 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. 4. Section 25186.5 of the Health and Safety Code is amended to read:

25186.5. (a) In making a determination pursuant to Section 25186, the director may contact the Attorney General, the United States Department of Justice, the Environmental Protection Agency, or other agencies outside of the state which have, or have had, regulatory or enforcement jurisdiction over the applicant in connection with any hazardous waste or hazardous materials activities.

(b) Every hazardous waste licenseholder or applicant, other than a federal, state, or local agency, who is not otherwise required to file a disclosure statement on or before January 1, 1989, shall file a disclosure statement with the department on or before January 1, 1989.

(c) If changes or additions of information regarding majority ownership, the business name, or the information required by paragraphs (6) and (8) of subdivision (a) of Section 25112.5 occur after the filing of the statement, the licenseholder or applicant shall provide that information to the department, in writing, within 30 days of the change or addition.

(d) Any person submitting a disclosure statement shall pay a fee set by the department in an amount adequate to defray the costs of implementing this section, per person, officer, director, or partner required to be listed in the disclosure statement, in addition to any other fees required. The department shall deposit these fees in the Hazardous Waste Control Account. The fees shall be made available, upon appropriation by the Legislature, to cover the costs of conducting the necessary background searches.

(e) Any person who knowingly makes any false statement or misrepresentation in a disclosure statement filed pursuant to the requirements of this chapter is, upon conviction, subject to the penalties specified in Sections 25189 and 25189.2 and subdivision (a)

of Section 25191.

(f) The disclosure statement submitted pursuant to subdivision (b) is exempt from the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 5. Section 25186.6 is added to the Health and Safety Code, to read:

25186.6. (a) In any case filed in any court or administrative tribunal, including, but not limited to, the Office of Administrative Hearings, which alleges any violations of this chapter or any statute, regulation, or requirement specified in Section 25186, the prosecuting attorney shall, within 30 days of the date of filing, forward, to the office of Attorney General located in the City of Los Angeles, a summary of the case which provides all of the following information:

(1) The case name and court or administrative number.

(2) The court or administrative tribunal in which the case is being prosecuted.

(3) The agency prosecuting the case.

(4) The name, business address, and telephone number of the prosecuting attorney.

(5) The statutes, regulations, or requirements which are alleged to have been violated.

(6) The date of filing and date or dates of alleged violations.

(7) A brief summary of the action.

(8) The names, addresses, and telephone numbers of all respondents or defendants in the action.

(9) The status of the case.

(b) Within 30 days of the conclusion of a case specified in subdivision (a) by verdict, award, judgment, dismissal, or settlement, the prosecuting attorney shall forward, to the office of the Attorney General located in the City of Los Angeles, an update of the information required by subdivision (a), including a statement describing the final outcome of the case.

(c) The cases subject to this section shall include those cases which are brought for purposes of clarifying, enforcing, limiting, or overturning any case which arose out of a violation of this chapter or statute, regulation, or requirement specified in Section 25186, including, but not limited to, appeals, actions for contempt, and revocations of probation.

SEC. 6. Section 25200.4 of the Health and Safety Code is amended to read:

25200.4. (a) Any application to use and operate a hazardous waste facility made pursuant to Section 25200, other than one submitted by a federal, state, or local agency, shall include a disclosure statement.

(b) 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 on or before January 1, 1996, deletes or extends that date.

SEC. 6.5. Section 25200.4 of the Health and Safety Code is amended to read:

25200.4. (a) Any application to use and operate a hazardous waste facility made pursuant to Section 25200, other than one submitted by a federal, state, or local agency, shall include a disclosure statement. The department shall take into consideration information provided by the applicant in the disclosure statement and any information made available to the department pursuant to Section 25186 5 in making a decision pursuant to Section 25186 or 25186.3 whether to issue or deny a hazardous waste facilities permit to use and operate the hazardous waste facility.

(b) Notwithstanding this article, on and after July 1, 1990, the department shall not issue a hazardous waste facilities permit unless it has provided public notice in a newspaper of general circulation within the area affected by the proposed facility of its consideration of a hazardous waste facilities permit application for the proposed facility. If the department has knowledge of any violation by the applicant of any statute or regulation specified in Section 25186, the newspaper notice, and any other public notice which the department is required to provide relating to the issuance of the hazardous waste facilities permit, shall include a statement that information regarding the facility owner's environmental compliance record set forth in a disclosure statement submitted to the department pursuant to this section or otherwise known to the department, is available from the department for public review.

(c) 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 on or before January 1, 1996, deletes or extends that date.

SEC. 7. Section 25311 is added to the Health and Safety Code, to read:

25311. "Contract competitor" means any person competing for a state contract pursuant to subdivision (c) of Section 25358.3.

SEC. 8. Section 25358.10 is added to the Health and Safety Code, to read:

25358.10. (a) Before receiving any award for a contract specified in subdivision (c) of Section 25358.3, the contract competitor shall submit a disclosure statement, as specified by Section 25112.5, except for a federal, state, or local agency. The director may deny or rescind the award of such a contract if the director makes any of the following determinations:

(1) The director determines, in writing, that the contract competitor, or, if the contract competitor is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity or debt liability of that business entity, has engaged in activities resulting in any federal or state conviction which are significantly related to the fitness of the contract competitor to perform the contract competitor's duties or activities under the contract. For purposes of this paragraph, "conviction" means a plea or verdict of guilty or a conviction following a plea of

nolo contendere. Any action which the department may take pursuant to this subdivision relating to the department's refusal to permit a person to compete for the contract may be based upon a conviction for which any of the following has occurred:

(A) The time for appeal has elapsed.

(B) The judgment of conviction has been affirmed on appeal.

(C) Any order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Section 1203.4 of the Penal Code permitting that person to withdraw the plea of guilty and to enter the plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(2) The director determines, in writing, that the contract competitor, or, if the contract competitor is a business entity, any trustee, officer, director, partner, or any person holding more than 5 percent of the equity in or debt liability of that business entity, has violated or failed to comply with this chapter, Chapter 6.5 (commencing with Section 25100), or Chapter 6.7 (commencing with Section 25280) of this division, the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sec. 1801 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), or any other equivalent federal and state statute or any requirement or regulation adopted pursuant thereto relating to the generation, transportation, treatment, storage, recycling, disposal, or handling of a hazardous waste, as defined in Section 25117, a hazardous substance, as defined in Section 25316, or a hazardous material, as defined in Section 353 of the Vehicle Code, if the violation or failure to comply shows a repeating or recurring pattern or may pose a threat to public health or safety or the environment.

(3) The director determines, in writing, that the contract competitor has had a license, permit, or registration for the generation, transportation, treatment, storage, recycling, disposal, or handling of hazardous waste or hazardous substances revoked or suspended.

(b) 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. 9. Section 6.5 of this bill incorporates amendments to Section 25200.4 of the Health and Safety Code proposed by both this bill and AB 411. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 25200.4 of the Health and Safety Code, and (3) this bill is enacted after AB 411, in which case Section 6 of this bill shall not become operative.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. However, 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1258

An act to amend Section 1063.1 of the Insurance Code, and to amend Sections 3701.5 and 3702.8 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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 claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers' compensation policy issued pursuant to paragraph (2) of subdivision (a) of Section 3702.8 of the Labor Code which cover all or any part of workers' compensation liabilities of an employer that was previously issued a certificate of consent to self-insure pursuant to subdivision (b) of Section 3700 of the Labor Code.

(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 policy providing retroactive insurance of a known loss or losses.

(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 3701.5 of the Labor Code is amended to read:

3701.5. (a) If the director determines that a private self-insured employer has failed to pay workers' compensation as required by this division, the security deposit shall be utilized to administer and pay the employer's compensation obligations.

(b) If the director determines the security deposit has not been immediately made available for the payment of compensation, the director shall determine the method of payment and claims administration as appropriate, which may include, but is not limited to, payment by a surety that issued the bond, or payment by an issuer of an irrevocable letter of credit, and administration by a surety or by an adjusting agency, or through the Self-Insurers' Security Fund, or any combination thereof.

(c) If the director determines the payment of benefits and claims administration shall be made through the Self-Insurers' Security Fund, the fund shall commence payment of the private self-insured employer's obligations for which it is liable under Section 3743 within 30 days of notification. Payments shall be made to claimants whose entitlement to benefits can be ascertained by the fund, with or without proceedings before the appeals board. Upon the assumption of obligations by the fund pursuant to the director's determination, the fund shall have a right to immediate possession of any posted security and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security to the fund together with the interest that has accrued since the date of the self-insured employer's default or insolvency.

(d) The director shall promptly audit an employer upon making a determination under subdivision (a) or (b). The employer, any excess insurer, and any adjusting agency shall provide any relevant information in their possession. If the audit results in a preliminary estimate that liabilities exceed the amount of the security deposit, the director shall direct the custodian of the security deposit to liquidate it and provide all proceeds to the Self-Insurers' Security Fund. If the preliminary estimate is that liabilities are less than the security deposit, the director shall ensure the administration and payment of compensation pursuant to subdivision (b).

(e) The payment of benefits by the Self-Insurers' Security Fund from security deposit proceeds shall release and discharge any custodian of the security deposit, surety, any issuer of a letter of credit, and the self-insured employer, from liability to fulfill obligations to provide those same benefits as compensation, but does not release any person from any liability to the fund for full reimbursement. Payment by a surety constitutes a full release of the surety's liability under the bond to the extent of that payment, and entitles the surety to full reimbursement by the principal or his or her estate. Full reimbursement includes necessary attorney fees and other costs and expenses, without prior claim or proceedings on the part of the injured employee or other beneficiaries. Any decision or determination made, or any settlement approved, by the director or by the appeals board under subdivision (g) shall conclusively be

presumed valid and binding as to any and all known claims arising out of the underlying dispute, unless an appeal is made within the time limit specified in Section 5950.

(f) The director shall advise the Self-Insurers' Security Fund promptly after receipt of information indicating that a private self-insured employer may be unable to meet its compensation obligations. The director shall also advise the Self-Insurers' Security Fund of all determinations and directives made or issued pursuant to this section.

(g) Disputes concerning the posting, renewal, termination, exoneration, or return of all or any portion of the security deposit, or any liability arising out of the posting or failure to post security, or adequacy of the security or reasonableness of administrative costs, including legal fees, and arising between or among a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, a self-insured employer, or the Self-Insurers' Security Fund shall be resolved by the director. An appeal from the director's decision or determination may be taken to the appropriate superior court by petition for writ of mandate. Payment of claims from the security deposit or by the Self-Insurers' Security Fund shall not be stayed pending the resolution of the disputes unless and until the superior court issues a determination staying a payment of claims decision or determination of the director.

SEC. 3. Section 3702.8 of the Labor Code is amended to read:

3702.8. (a) Private employers who have ceased to be self-insured employers shall discharge their continuing obligations to secure the payment of compensation which accrued during the period of self-insurance, for purposes of Sections 3700, 3700.5, 3706, and 3715, by compliance with all of the following obligations of current certificate holders:

(1) Filing annual reports as deemed necessary by the director to carry out the requirements of this chapter.

(2) Depositing and maintaining security deposit for accrued liability for the payment of any compensation which may become due, pursuant to subdivision (b) of Section 3700 and Section 3701, except as provided in subdivision (c).

(3) Paying within 30 days all assessments of which notice is sent, pursuant to subdivision (b) of Section 3745, within 36 months from the last day its certificate of self-insurance was in effect. Assessments shall be based on the benefits paid by the employer during the last full calendar year of self-insurance on claims incurred during that year.

(b) In addition to proceedings to establish liabilities and penalties otherwise provided, a failure to comply may be the subject of a proceeding before the director. An appeal from the director's determination shall be taken to the appeals board in the manner provided for in a petition for reconsideration pursuant to Section 5903. The appeals board may, in its discretion, assign the matter to

a referee pursuant to Sections 5309 and 5310.

(c) Notwithstanding subdivision (a), a private employer who has ceased to be self-insured may discharge its continuing obligations as a self-insurer by the purchase of a special excess workers' compensation insurance policy from an insurer authorized to transact workers' compensation insurance in this state. Any special excess workers' compensation policy issued by an insurer shall be approved as to form and substance by the Insurance Commissioner. In order for the policy to discharge the full obligations of the employer to maintain a security deposit with the director for the payment of self-insured claims, the special excess policy shall provide coverage for all claims for compensation arising out of injuries occurring during the period the private employer was self-insured. The employer shall maintain the required deposit with the director for a period of three years after the issuance date of the special excess policy unless the insurer issuing the policy posts a financial guarantee bond for a period of three years in an amount equal to the deposit required by the director. The financial guarantee bond shall be issued by a company authorized to issue these bonds in the state but which is not owned or affiliated with the insurer issuing the special excess workers' compensation insurance policy.

The posting of a special excess insurance policy with the director shall discharge the obligation of the Self-Insurer's Security Fund pursuant to Section 3744 to pay claims in the event of an insolvency of the private employer. The California Insurance Guarantee Association shall be advised by the director whenever a special excess insurance policy is posted.

SEC. 4. The amendments to Section 1063.1 of the Insurance Code made by Section 1 of this act are intended to be declaratory of the existing law set forth in subdivision (c) thereof which excludes as a covered claim an insurance policy or servicing agreement providing retroactive coverage for a known loss or losses and includes as a covered claim retrospective rating plans that have continued to be assessed and have paid surcharges required by statute to fund the California Insurance Guarantee Association from and after January 1, 1988.

CHAPTER 1259

An act to add and repeal Article 5.7 (commencing with Section 389.30) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, relating to health care professionals, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature finds and declares the following:

(a) Hospitals in California are reporting increasing vacancies in positions for highly skilled health care professionals.

(b) Changing values and goals of college students, the high costs of education programs for health care professionals, the aging work force, an aging society, and technological advances are trends which may worsen this shortage.

(c) Reliable data needs to be collected regarding the current and future demand and supply of health care professionals.

(d) The California Community Colleges and the California State University need to place an appropriate priority on the education of health care professionals.

SEC. 2. Article 5.7 (commencing with Section 389.30) is added to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, to read:

Article 5.7. Health Care Professionals Recruitment

389.30. For purposes of this article, the following definitions shall apply:

(a) "Health care careers" means registered nursing, licensed vocational nursing, and any other health care discipline that the office determines should be included.

(b) "Office" means the Office of Statewide Health Planning and Development.

(c) "Second career applicants" means individuals who are not attending school and desire to enter a health care career, individuals seeking a career change, college graduates unable to find employment in their field of study, individuals receiving a military discharge who have served in the Medical Corps, and other individuals who the office determines should be included.

389.33. (a) The office shall enter into contracts with organizations to develop and implement innovative health care career recruitment projects directed toward the recruitment of individuals from groups which have been traditionally underrepresented in health care careers, including, but not limited to, second career applicants, into health care careers. The office shall

develop an application process for awarding the contracts which provides for the solicitation of proposals from applicants who the office determines are qualified to develop and implement the projects.

(b) Each proposal for a contract to develop and implement a project pursuant to subdivision (a) shall include, but not be limited to, the following elements:

(1) A statement of the target population or populations and health care career category or categories to be included.

(2) Recruitment methods to be used.

(3) A plan for documentation and evaluation of the project's impact on health care career recruitment.

(c) The office shall report to the Legislature within 180 days of the completion of a project funded under this article an evaluation of the effect of the project in meeting the goal of recruiting individuals from groups which have been traditionally underrepresented in health care careers, including, but not limitied to, second career applicants, into health care careers, and document the number of individuals from groups which have been traditionally underrepresented in health care careers, including, but not limited to, second career applicants, who have been recruited into health care careers. A final written evaluation of a project funded under this article shall be made available by the office to the public within 180 days of completion of the respective project.

389.36. In selecting, monitoring, and evaluating projects funded under this article, the office shall do all of the following:

(a) Consult with acute and long-term care providers and representatives of health care careers into which individuals are to be recruited.

(b) Appoint an advisory committee which shall include representatives of health facilities licensed pursuant to subdivisions (a), (c), and (d) of Section 1250 and professional associations of health care careers into which individuals are to be recruited.

(1) The role of the advisory committee shall include, but not be limited to, the following:

(A) Reviewing and advising the office on project applications.

(B) Consulting with the office on project evaluation components.

(C) Assisting the office in monitoring the progress of the projects.

(2) The members of the advisory committee shall serve without compensation, but shall be reimbursed for necessary and travel expenses incurred in the performance of the duties of the committee.

389.40. 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 chaptered before January 1, 1992, deletes or extends that date.

SEC. 3. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the California Health Data and Planning Fund to the Office of Statewide Health Planning and Development for

purposes of this act.

CHAPTER 1260

An act to amend Section 66796.30 of, and to add Section 54992.3 to, the Government Code, relating to solid waste.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. Section 54992.3 is added to the Government Code, to read:

54992.3. (a) Any report or application filed with a local agency for a permit to operate a solid waste facility pursuant to Division 30 (commencing with Section 40000) of the Public Resources Code shall be submitted under oath or under penalty of perjury.

(b) Any report, notice, or application filed with the California Integrated Waste Management Board relating to the operation of a solid waste facility pursuant to Division 30 (commencing with Section 40000) of the Public Resources Code shall be submitted on a form approved by that board.

(c) Notwithstanding Section 54993, any application for a solid waste facilities permit, issued by the California Integrated Waste Management Board or by a local agency pursuant to Division 30 (commencing with Section 40000) of the Public Resources Code, shall be accompanied by a filing fee in an amount established in a fee schedule by the board sufficient to pay the costs of processing the application and the costs of closure and postclosure maintenance planning for the solid waste facility. The fee under this subdivision is in addition to any fees imposed on solid waste operations or disposal pursuant to other provisions of law.

SEC. 2. Section 66796.30 of the Government Code is amended to read:

66796.30. (a) Any person operating a solid waste facility under an approved land use permit or under other equivalent local approval dated prior to August 15, 1977, shall file a notice of operation with the appropriate enforcement agency by August 15, 1977. If the operator was operating the facility prior to August 15, 1977, and is in compliance with the state minimum standards for solid waste handling and disposal and any applicable local ordinances and regulations, a solid waste facilities permit shall be granted.

(b) Any person who proposes to become an operator of a solid waste facility after August 15, 1977, shall file with the enforcement agency having jurisdiction over such facility an application for a solid waste facilities permit at least 120 days in advance of the date on which it is desired to commence operation.

(c) The operation of a solid waste facility by any person except as authorized pursuant to a solid waste facilities permit is prohibited.

(d) When the operator of the disposal site is not the disposal site owner, the disposal site operator's application for a solid waste facilities permit shall contain any information that the board may require regarding the disposal site owner's interest in the real property utilized as the disposal site.

(e) After August 15, 1977, no operator of a solid waste facility shall make a significant change in the design or operation of any such facility except in conformance with the terms and conditions in a solid waste facilities permit or revised permit issued to such operator. If the operator wishes to modify the operation of a solid waste facility, the operator shall file an application for revision of the existing solid waste facilities permit. The application shall be filed at least 120 days in advance of the date when the proposed modification is to take place. Under circumstances which present an immediate danger to public health, as determined by the governing board of the enforcement agency, the 120-day filing period may be waived by the governing board.

(f) Any person who is the owner of a disposal site which is in operation after August 15, 1977, shall file with the enforcement agency having jurisdiction over the disposal site a report specifying the date when he encumbered, sold, transferred, or conveyed, or permitted to be encumbered, sold, transferred or conveyed, by agreement for sale, or in any other manner, his interest or any portion thereof in the real property utilized as the disposal site. The report shall be filed within 30 days after any such sale, transfer or conveyance.

(g) Each report and application filed under this section shall be submitted under oath or under penalty of perjury.

(h) Each report, notice, and application filed under this section shall be submitted on a form approved by the board.

(i) Each application required to be filed under this section shall be accompanied by a filing fee. The enforcement agency may charge a fee which shall not exceed the estimated reasonable cost of providing the services for which the fee is charged. Notwithstanding Section 54993, the enforcement agency shall impose the fee pursuant to Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5. This fee is in addition to the fee authorized by Section 66796.20.

SEC. 3. Section 1 of this act shall become operative only if Assembly Bill 939 of the 1989–90 Regular Session is enacted and becomes operative on or before January 1, 1990, and adds Division 30 (commencing with Section 40000) to the Public Resources Code, in which case Section 2 of this act shall not be operative.

CHAPTER 1261

An act to add Section 13133 to, the Health and Safety Code, relating to fire safety.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 13133 is added to the Health and Safety Code, to read:

13133. The State Fire Marshal shall develop and adopt regulations establishing new occupancy classifications and specific fire safety standards appropriate for residential facilities, as defined in Section 1502, and residential care facilities for the elderly, as defined in Section 1569.2.

CHAPTER 1262

An act relating to minors.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) Within any group of people, there exists a need for guidelines of acceptable behavior. It is the right and responsibility of adults to establish laws for the benefit and protection of society. In that regard, the right and responsibility for establishing reasonable guidelines for the family unit belongs to the adults within that unit. The Legislature strongly emphasizes that the family unit is the fundamental resource of American life which should be nurtured and remain intact unless there is compelling evidence to the contrary in individual cases.

(2) Runaways, truants, alcohol- and drug-dependent youths, and child prostitutes pose a serious risk to both themselves and the community at large. These types of youth would be best handled in an informal setting where the most effective kind of supervision can be administered.

(3) Runaways pose a particularly difficult problem to the state because, they, unlike other missing children, often leave home on their own volition.

(4) There is a need to review the interrelationship between statutes relating to runaway youth, including, but not limited to, child protective services, health care services, and educational and

social services, to ensure that the law adequately protects minors and prevents the exploitation of youth.

(5) It is the intent of the Legislature to promote methods within state and local government and the juvenile justice system for the care, service, and discipline of runaway and abandoned youth.

(b) The Office of Criminal Justice Planning shall review statutes and problem areas, and existing state, local, and private sector services and procedures for providing services, in order to recommend state policy, and to establish procedures for providing service to runaway and abandoned youth.

(c) In fulfilling the mandate of subdivision (b), the Office of Criminal Justice Planning may consult with the following: the Health and Welfare Agency, the State Department of Social Services, the State Department of Health Services, the State Department of Mental Health, the State Department of Alcohol and Drug Programs, the State Department of Education, a youth who has previously run away, a child advocate organization, shelters for runaway or abandoned youth, law enforcement agencies, probation officers, and juvenile court judges.

(d) The Office of Criminal Justice Planning shall submit, on or before June 30, 1991, recommendations to the Legislature which shall contain suggestions on statutory revisions designed to benefit runaway youth and strengthen the family unit.

CHAPTER 1263

An act to amend and repeal Section 8208 of, and to add and repeal Article 8.5 (commencing with Section 8245) of Chapter 2 of Part 6 of, the Education Code, relating to child care.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989]

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 center" means a facility in which child care and development services are provided, on an ongoing basis, on the same premises as senior care services, involving activities organized to provide interaction between children and seniors in a manner designed to meet the needs of both. The participation of seniors in any activity of interaction with children, as described in this subdivision, shall be voluntary.

(u) "Intergenerational staff" means persons of various generations.

(v) "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.

(w) "Parent" means any person living with a child who has responsibility for the care and welfare of the child.

(x) "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.

(y) A "proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(z) "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.

(aa) "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.

(bb) "Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(cc) "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.

(dd) "State preschool services" means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(ee) "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.

(ff) "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.

(gg) "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.

(hh) 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. If that date is not deleted or extended, then, on and after January 1, 1993, pursuant to Section 9611 of the Government Code, Section 8208 of the Education Code, as amended by Section 1 of Chapter 1120 of the Statutes of 1987, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2. Article 8.5 (commencing with Section 8245) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 8.5. Intergenerational Center

8245. The Legislature finds and declares the following:

(a) California is currently experiencing an increased demand for both child care facilities and senior care facilities. That need will continue to increase with the relative aging of the population, the increasing number of women entering or reentering the work force, and the economic necessity of two-income households.

(b) The establishment of intergenerational centers will increase the rate of staff retention in senior care facilities, and will have positive psychological effects, and increase educational and cultural opportunities, for both children and seniors.

8246. (a) From funds made available for this purpose under Item 6110-196-001 of Section 2.00 of the Budget Act of 1989, the Superintendent of Public Instruction shall contract with an applicant local governmental agency, skilled nursing facility, or private nonprofit organization for the establishment of an intergenerational center in an existing senior care facility operated by that agency or organization. For purposes of this article, "senior care facility" means a social day care facility that serves the elderly, an adult day health center, a skilled nursing facility, an intermediate care facility, or a residential care facility for the elderly. Each application to be submitted pursuant to this article shall be developed in consultation with both the community care licensing division of the State Department of Social Services and the State Department of Health Services.

(b) The intergenerational center shall be established and operated in Oakland as a pilot project pursuant to the purposes set forth in Section 8245, and shall be operated in accordance with all staffing and other requirements that apply under law to child care or senior care facilities and services.

(c) Funding disbursed by the Superintendent of Public Instruction under the contract described in this section shall be expended only for costs related to the establishment of an intergenerational center, including, but not necessarily limited to,

planning and administrative costs, architectural fees, moving expenses, salaries and wages, training, rent, utilities, and insurance.

(d) It is the intent of the Legislature that subsequent funding for the purposes of this article be appropriated under the Budget Act of 1991 and the Budget Act of 1992.

8247. The agency or organization selected pursuant to Section 8246 shall provide reports and other information concerning the intergenerational center as the Superintendent of Public Instruction may require. No later than January 1, 1992, the Superintendent of Public Instruction shall report to the Legislature regarding the establishment and operation of the intergenerational center, together with his or her recommendations concerning the operation of intergenerational centers elsewhere in the state.

8248. The Intergenerational Center Project shall be deemed successful if the following criteria are met: increased staff retention; increased ability to attract qualified personnel; and positive psychological effects for seniors and children.

8249. 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 January 1, 1993, deletes or extends that date.

SEC. 3. (a) The City of Oakland is an urban community that demonstrates an increased need for child care and senior care facilities, based upon the growth it is experiencing in its already large populations of older persons and children. Moreover, the operation of an intergenerational center, which would provide both child care and senior care at a reduced cost, resulting from reduced capital expenses, would be of particular benefit in Oakland, in that an adequate supply of affordable child care and senior care resources is not currently available to the city's residents, many of whom are persons of low income.

(b) Due to the unique circumstances specified in subdivision (a) of this act concerning the City of Oakland, 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.

(c) 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.

CHAPTER 1264

An act to amend Sections 6545, 6546, 6585, 6587, and 6588 of, to add Section 91521.3 to, and to repeal Section 91505 of, the Government Code, and to add Sections 33641.5 and 33671.5 to the Health and Safety Code, relating to bonds

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 6545 of the Government Code is amended to read:

6545. "Project" as used in this article means buildings, structures, improvements and all facilities appurtenant thereto or provided therefor together with land and offstreet parking facilities necessary therefor to be financed by revenue bonds issued pursuant to this article. In addition, with respect to a facility for the generation or transmission of electric energy, a project also means an ownership interest or a capacity right in that facility which may be situated in whole or in part within or without the state. In addition, with respect to a telecommunication system or service, a project also means a contract for the installation, provision, or maintenance of that system or service. In addition, a project also means any of the purposes specified in an agreement pursuant to Section 6516.

SEC. 2. Section 6546 of the Government Code is amended to read:

6546. In addition to other powers, any agency, commission, or board provided for by a joint powers agreement pursuant to Article 1 (commencing with Section 6500) may issue revenue bonds pursuant to this article to pay the cost and expenses of acquiring or constructing a project for any or all of the following purposes:

(a) An exhibition building or other place for holding fairs or exhibitions for the display of agricultural, livestock, industrial, or other products, including movable equipment, entertainment facilities, and other facilities to be used in conjunction with holding a fair or exposition in several locations including those projects and facilities specified in paragraph (1) of subdivision (f) of Section 19596.5 of the Business and Professions Code, and those projects and facilities specified in paragraph (1) of subdivision (i) of Section 19596.6 of the Business and Professions Code, and for those purposes specified in an agreement pursuant to Section 6516 of the Government Code.

(b) A coliseum, a stadium, a sports arena or sports pavilion or other building for holding sports events, athletic contests, contests of skill, exhibitions, spectacles, and other public meetings.

(c) Any other public buildings, including, but not limited to, general administrative facilities of a city, county, city and county,

special district, or authority.

(d) A regional or local public park, recreational area, or recreational center, and all facilities and improvements related thereto.

(e) A facility for the generation or transmission of electrical energy for public or private uses and all rights, properties, and improvements necessary therefor, including fuel and water facilities and resources. As used in this chapter, "transmission of electric energy" does not include the final distribution of electric energy to the consumer.

(f) A facility for the disposal, treatment, or conversion to energy and reusable materials of solid or hazardous waste or toxic substances.

(g) Facilities for the production, storage, transmission, or treatment of water or waste water.

(h) Local streets, roads, and bridges.

(i) Bridges and major thoroughfares construction pursuant to Sections 50029 and 66484.3.

(j) Mass transit facilities or vehicles.

(k) Publicly owned or operated commercial or general aviation airports and airport-related facilities.

(*l*) Police or fire stations.

(m) Public works facilities, including corporation yards.

(n) Public health facilities owned or operated by a city, county, city and county, special district, or authority.

(o) Criminal justice facilities, including court buildings, jails, juvenile halls, and juvenile detention facilities.

(p) Public libraries.

(q) Publicly owned or operated parking garages.

(r) Low-income housing projects owned or operated by a city, county, city and county, or housing authority.

(s) Public improvements authorized in a project area created pursuant to the Community Redevelopment Law, Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

(t) Public improvements authorized pursuant to 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, and the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

(u) Telecommunication systems or service, including, but not limited to, the installation, provision, or maintenance of that system or service.

(v) Equipment necessary to support the above-listed facilities or necessary to deliver public services therefrom, including, but not

limited to, telecommunications equipment, computers, and service vehicles.

Bonds may be issued pursuant to this article if the joint powers entity, or its individual parties which contract pursuant to Section 6547.5, 6547.6, or 6547.7 to make payments to be applied to the payment of the indebtedness, have the power to acquire, construct, maintain, or operate one or more of the projects specified in this section.

SEC. 3. Section 6585 of the Government Code is amended to read:

6585. The definitions in this section shall govern the construction and interpretation of this article.

(a) "Authority" means an entity created pursuant to Article 1 (commencing with Section 6500).

(b) "Bond purchase agreement" means a contractual agreement executed between the authority and the local agency whereby the authority agrees to purchase bonds of the local agency.

(c) "Bonds" means bonds (including, but not limited to, assessment bonds, redevelopment agency bonds, government issued mortgage bonds, and industrial development bonds), notes (including bond, revenue, tax, or grant anticipation notes), commercial paper, floating rate, and variable maturity securities, and any other evidences of indebtedness and also includes certificates of participation or lease-purchase agreements.

(d) "Cost," as applied to a public capital improvement or portion thereof financed under this part, means all or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a public capital improvement; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery and equipment; finance charges; interest prior to, during, and for a period after, completion of that 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 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 or acquisition or financing of any public capital improvement.

(e) "Legislative body" means the governing body of a local agency.

(f) "Local agency" means a party to the agreement creating the authority, or an agency or subdivision of that party, sponsoring a project of public capital improvements, or any city, county, city and county, authority, district, or public corporation of this state.

(g) "Public capital improvements" means one or more projects

specified in Section 6546.

(h) "Revenue" means all income and receipts of the authority from a bond purchase agreement, bonds acquired by the authority, loans, installment sale agreements, and other revenue producing agreements entered into by the authority, projects financed by the authority, grants and other sources of income, and all interest or other income from any investment of any money in any fund or account established for the payment of principal or interest or premiums on bonds.

(i) "Working capital" means money to be used by, or on behalf of, a local agency for any purpose for which a local agency may borrow money pursuant to Section 53852.

SEC. 4. Section 6587 of the Government Code is amended to read:

6587. This article does not limit any other law authorizing, or providing for, the financing of public capital improvements. Likewise, this article does not limit any other law regarding local indebtedness, or limit the exercise of any other power of an authority created pursuant to this chapter. This article shall be deemed to provide a complete and supplemental method for exercising the powers authorized by this article, and shall be deemed as being supplemental to the powers conferred by other applicable laws. The issuance of bonds, financing, or refinancing under this article need not comply with the requirements of any other state laws applicable to the issuance of bonds, including, but not limited to, other articles of this chapter.

SEC. 5. Section 6588 of the Government Code is amended to read:

6588. In addition to other powers specified in an agreement pursuant to Article 1 (commencing with Section 6500) and Article 2 (commencing with Section 6540), the authority may do any or all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Sue and be sued in its own name.

(c) Issue bonds, including, at the option of the authority, bonds bearing interest, to pay the cost of any public capital improvement, working capital, or liability or other insurance program.

(d) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this article.

(e) As provided by applicable law, employ and compensate bond counsel, financial consultants, and other advisers determined necessary by the authority in connection with the issuance and sale of any bonds.

(f) Contract for engineering, architectural, accounting, or other services determined necessary by the authority for the successful development of a public capital improvement.

(g) Pay the reasonable costs of consulting engineers, architects,

accountants, and construction, land use, recreation, and environmental experts employed by any sponsor or participant if the authority determines those services are necessary for the successful development of public capital improvements.

(h) Take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands which are located within the state which the authority determines are necessary or convenient for the financing of public capital improvements, or any portion thereof.

(i) Receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value, for, or in aid of, the construction financing, or refinancing of public capital improvement, or any portion thereof or for the financing of working capital or insurance programs, or for the payment of the principal of and interest on bonds if the proceeds of those bonds are used for one or more of the purposes specified in this section.

(j) Make secured or unsecured loans to any local agency in connection with the financing of capital improvement projects, working capital or insurance programs in accordance with an agreement between the authority and the local agency. However, no loan shall exceed the total cost of the public capital improvements, working capital or insurance needs of the local agency as determined by the local agency and by the authority.

(k) Make secured or unsecured loans to any local agency in accordance with an agreement between the authority and the local agency to refinance indebtedness incurred by the local agency in connection with public capital improvements undertaken and completed.

(*l*) Mortgage all or any portion of its interest in public capital improvements and the property on which any project is located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible.

(m) Assign or pledge all or any portion of its interests in mortgages, deeds of trust, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible, of a local agency to which the authority has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the authority, for the benefit of the holders of bonds issued to finance public capital improvements. The pledge of moneys, revenues, accounts, contract rights, or rights to payment of any kind made by or to the authority pursuant to the authority granted in this part shall be valid and binding from the time the pledge is made for the benefit of the pledgees and successors thereto, against all parties irrespective of whether the parties have notice of the claim.

(n) Lease the public capital improvements being financed to a local agency, upon terms and conditions that the authority deems proper; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations of the

lease; include in any lease provisions that the lessee shall have options to renew the lease for a period or periods, and at rents as determined by the authority; purchase or sell by an installment agreement or otherwise any or all of the public capital improvements; or, upon payment of all the indebtedness incurred by the authority for the financing or refinancing of the public capital improvements, the authority may convey any or all of the project to the lessee or lessees.

(o) Charge and apportion to local agencies which benefit from its services the administrative costs and expenses incurred in the exercise of the powers authorized by this article.

(p) Issue, obtain, or aid in obtaining, from any department or agency of the United States or of the state, or any private company, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument evidencing or securing the same, made or entered into pursuant to this article.

(q) Notwithstanding any other provision of this article, enter into any agreement, contract, or any other instrument with respect to any insurance or guarantee; accept payment in the manner and form as provided therein in the event of default by a local agency; and assign any insurance or guarantee which acts as security for the authority's bonds.

(r) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable to carry out any power authorized by this article.

(s) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, in obligations that are authorized by law for the investment of trust funds.

(t) At the request of affected local agencies, combine and pledge revenues to public capital improvements for repayment of one or more series of bonds issued pursuant to this article.

(u) Delegate to any of its individual parties or other responsible individuals the power to act on its behalf subject to its general direction, guidelines, and oversight.

(v) Purchase, with the proceeds of its revenue, bonds issued by any local agency at public or negotiated sale. Bonds purchased pursuant to this subdivision may be held by the authority or sold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other bonds issued by the authority.

(w) Set any other terms and conditions on any purchase or sale pursuant to this section as it deems by resolution to be necessary, appropriate, and in the public interest, in furtherance of the purposes of this article.

SEC. 6. Section 91505 of the Government Code is repealed.

SEC. 7. Section 91521.3 is added to the Government Code, to read:

91521.3. Authorities shall not be authorized to undertake projects

through the issuance of bonds on or after January 1, 1995, unless a later enacted statute, which is enacted before January 1, 1995, deletes or extends that date. This section shall not apply to issuance of bonds to refund any bonds issued prior to January 1, 1995.

SEC. 8. Section 33641.5 is added to the Health and Safety Code, to read:

33641.5. (a) As used in this section:

(1) "Collateral" means any revenues, moneys, accounts receivable, contracts rights, and other rights to payment of whatever kind or other property subject to the pledge provided for or created in a pledge document.

(2) "Pledge document" means the resolution, indenture, trust agreement, loan agreement, lease, installment sale agreement, reimbursement agreement, pledge agreement, or similar agreement in which the pledge is provided for or created.

(3) "Pledge" means a committment of, by the grant of a lien on and a security interest in, the collateral referred to in a pledge document.

(b) A pledge of collateral by a redevelopment agency to secure, directly or indirectly, the payment of the principal or redemption price of, or interest on, any bonds, or any reimbursement agreement with any provider of credit to bonds, which is issued by or entered into by an agency shall be valid and binding in accordance with the terms of the pledge document from the time the pledge is made for the benefit of pledgees and successors thereto.

The collateral shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which immediately shall attach to the collateral and be effective, binding, and enforceable against the pledgor, its successors, purchasers of the collateral, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, the pledge document irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act.

SEC. 9. Section 33671.5 is added to the Health and Safety Code, to read:

33671.5. Whenever any redevelopment agency is authorized to, and does, expressly pledge taxes allocated to, and paid into a special fund of, the agency pursuant to Section 33670, to secure, directly or indirectly, the obligations of the agency including, but not limited to, bonded indebtedness and agreements pursuant to subdivision (b) of Section 33401, then that pledge heretofore or hereafter made shall have priority over any other claim to those taxes not secured by a prior express pledge of those taxes.

CHAPTER 1265

An act to amend Sections 4600.1 and 4607.1 of the Civil Code, relating to family law.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 4600.1 of the Civil Code is amended to read:

4600.1. (a) In any proceeding under Title 2 (commencing with Section 4400) or Title 3 (commencing with Section 4500) where there are minor children of the marriage, and in any action for exclusive custody under Section 4603, a petition for a temporary custody order containing the statement required by Section 5158 may be included with the initial filing of the petition or action or may be filed at any time thereafter.

(b) If the parties have agreed to or reached an understanding on the custody or temporary custody of their children, a copy of the agreement or an affidavit as to their understanding shall be attached to the petition or action. As promptly as possible after this filing, the court shall, except in exceptional circumstances, enter an order awarding temporary custody in accordance with the agreement or understanding, or in accordance with any stipulation of the parties.

(c) In the absence of an agreement, understanding, or stipulation, the court may, if jurisdiction is appropriate, enter an ex parte order, set a hearing date within 20 days, and issue an order to show cause on the responding party. If the responding party does not appear or respond within the time set, the temporary order may be extended as necessary, pending the termination of the proceedings.

(d) If, despite good faith efforts, service of the ex parte order and order to show cause has not been effected in a timely fashion and there is reason to believe, based on an affidavit, or other manner of proof made under penalty of perjury, by the petitioner, that the responding party has possession of the minor child or children and seeks to avoid the jurisdiction of the court or is concealing the whereabouts of the child or children, then the hearing date may be reset and the ex parte order extended up to an additional 90 days After service has been effected, either party may request ex parte that the hearing date be advanced or the ex parte order be dissolved or modified.

(e) In conjunction with any ex parte order seeking or modifying an order of custody, the court shall enter an order restraining the person receiving custody from removing the child from the state pending notice and a hearing on the order seeking or modifying custody. The court shall refrain from making any order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the

child will be removed from the State of California.

SEC. 2. Section 4607.1 of the Civil Code is amended to read:

4607.1. The Legislature finds and declares that the mediation of cases involving custody and visitation concerning children should be governed by uniform standards of practice, which shall be adopted by the Judicial Council. The standards of practice shall include, but not be limited to, all of the following:

(a) Provision for the best interests of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents.

(b) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future.

(c) The conducting of negotiations in such a way as to equalize power relationships between the parties.

In adopting the standards of practice, the Judicial Council shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation of proceedings for the dissolution of marriage. The Judicial Council shall adopt the standards by January 1, 1991, and at that time, shall offer training with respect to the standards to mediators.

CHAPTER 1266

An act to amend Sections 4513, 4800.9, and 5120.110 of the Civil Code, relating to family law.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 4513 of the Civil Code is amended to read:

4513. In cases in which the court has determined that a decree of dissolution ought to be granted, but by mistake, negligence, or inadvertence, the judgment has not been signed, filed, and entered, the court may cause the judgment to be signed, dated, filed, and entered therein as of the date when the same could have been signed, dated, filed, and entered originally, if it appears to the satisfaction of the court that no appeal is to be taken in the action or motion made for a new trial, to annul or set aside the judgment or for relief under Chapter 8 (commencing with Section 469) of Title 6 of Part 2 of the Code of Civil Procedure. This action may be taken by the court on its own motion or upon the motion of either party thereto. In contested cases, the motion of a party shall be with notice to the other party. The court may cause the judgment to be entered nunc pro tunc as aforesaid, even though the judgment may have been previously entered, where through mistake, negligence, or inadvertence the judgment was not entered as soon as it could have

been entered under the law if applied for. The court shall not cause a judgment to be entered nunc pro tunc as aforesaid as of a date prior to trial in the matter, prior to the date of an uncontested judgment hearing in the matter, or prior to the date of submission to the court of an application for judgment on affidavit pursuant to Section 4511. Upon the entry of the judgment, the parties shall have the same rights with regard to the dissolution of marriage becoming final on the date that it would have become final, had the judgment been entered upon the date when it could have been originally entered.

SEC. 2. Section 4800.9 of the Civil Code is amended to read:

4800.9. (a) Notwithstanding Section 4800, in any case in which the parties do not agree in writing to a voluntary division of the community property and quasi-community property of the parties, the issue of the character, the value, and the division of the property may be submitted by the court to arbitration for resolution pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, if the total value of the community property in controversy in the opinion of the court does not exceed fifty thousand dollars ($50,000). The decision of the court regarding the value of the community property for purposes of this section shall not be appealable.

(b) The court may submit the matter to arbitration at anytime it believes the parties are unable to agree upon a division of the property.

SEC. 3. Section 5120.110 of the Civil Code is amended to read:

5120.110. (a) Except as otherwise expressly provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.

(b) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other community property, except property insignificant in amount. As used in this subdivision, "deposit account" has the meaning prescribed in Section 9105 of the Commercial Code, and "earnings" means compensation for personal services performed, whether as an employee or otherwise.

(c) For purposes of this section, "during marriage" shall not include the period during which the spouses are living separate and apart prior to a judgment for dissolution of marriage or a judgment for legal separation.

CHAPTER 1267

An act to add Section 14025 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 14025 is added to the Welfare and Institutions Code, to read:

14025. (a) Any person who buys or sells a Medi-Cal card, Medi-Cal label, or Medi-Cal beneficiary identification number is guilty of a public offense punishable by imprisonment in the county jail for not more than one year, or in the state prison, or by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(b) Any person who barters for the purpose of resale or commercial exchange a Medi-Cal card, Medi-Cal label, or Medi-Cal beneficiary identification number is guilty of a public offense punishable by imprisonment in the county jail for not more than one year, or in the state prison, or by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(c) This section shall not apply to any peace officer or any other person working under the peace officer's immediate direction, supervision, or instruction while investigating Medi-Cal fraud or other related crimes in the performance of his or her official duties.

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

CHAPTER 1268

An act to amend Section 66452.6 of the Government Code. relating to subdivisions.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred twenty-five thousand dollars ($125,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps which may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

The amount of one hundred twenty-five thousand dollars ($125,000) shall be increased by the registrar of contractors according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The adjustment by the registrar of contractors shall be effective on the first day of the month occurring more than 30 calendar days after the registrar of contractors makes that adjustment. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

"Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a) shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of three years. Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally

approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, other than the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one which, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

(g) The rights conferred by a vesting tentative map as provided by Chapter 4.5 (commencing with Section 66498.1) shall last for an initial time period, as provided by ordinance, but shall not be less

than one year or more than two years beyond the recording of the final map. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, the one year initial time period shall begin for each phase when the final map for that phase is recorded.

The initial time period shall be automatically extended by any time used by the local agency for processing a complete application for a grading permit or for design or architectural review, if the time used by the local agency to process the application exceeds 30 days, from the date that a complete application is filed. At any time prior to the expiration of the initial time period provided by this section, the subdivider may apply for a one-year extension. If the extension is denied by an advisory agency, the subdivider may appeal that denial to the legislative body within 15 days.

(h) If the subdivider submits a complete application for a building permit during the periods of time specified in subdivision (g), the rights conferred by Chapter 4 5 (commencing with Section 66498.1) shall continue until the expiration of that permit, or any extension of that permit granted by the local agency.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1269

An act to amend Section 16433 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 16433 of the Vehicle Code is amended to read:

16433. A certificate or certificates shall certify, if the motor vehicle liability policy therein cited has been canceled, that the department shall be notified in writing within 10 days after the cancellation of insurance becomes final.

Nothing in this section extends coverage beyond the date stated in the notice of cancellation.

CHAPTER 1270

An act to amend Sections 12804 and 12804.9 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 12804 of the Vehicle Code is amended to read:

12804. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class 1 or class 2 license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine. The

report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

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

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

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

(3) Class 3. Any of the following:

(A) Any truck tractor or truck tractor and semitrailer combination, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any three-axle housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle, any three-axle housecar or vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross, or towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

Class 3 does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle.

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

(c) Class 1 and class 2 driver's licenses shall be valid for operating class 1 or class 2 vehicles only when a medical certificate approved

by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, otherwise the license shall be valid only for operating class 3 vehicles and class 4 vehicles if so endorsed.

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

(2) A special driver certificate for the operation of a schoolbus, school pupil activity bus, youth bus, farm labor vehicle, or vehicle requiring operator certification pursuant to Section 12804.1 shall not be valid unless the driver has in his or her immediate possession, a medical certificate issued within the past two years.

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

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

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class 4 endorsement on that license.

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

(i) 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 on or before January 1, 1993, deletes or extends that date.

SEC. 1.5. Section 12804 of the Vehicle Code is amended to read:

12804. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class 1 or class 2 license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

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

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

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

(3) Class 3. Any of the following:

(A) Any truck tractor or truck tractor and semitrailer combination, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any three-axle housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle, any three-axle housecar or vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross, or towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

Class 3 does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle.

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

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

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

(2) A special driver certificate for the operation of a schoolbus, school pupil activity bus, youth bus, farm labor vehicle, or vehicle requiring operator certification pursuant to Section 12804.1 shall not be valid unless the driver has in his or her immediate possession, a medical certificate issued within the past two years.

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

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

(g) Notwithstanding subdivision (b), any person holding a valid California driver's license of any class may operate a motorized bicycle without taking any special examination for the operation of a motorized bicycle, and without having a class 4 endorsement on that license.

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

(i) The amendments made to this section in the 1989–90 Regular Session shall become operative only after federal regulations are in place permitting physician's assistants and nurse practitioners to complete the physicals described in this section.

(j) 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 on or before January 1, 1993, deletes or extends that date.

SEC. 2. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license

to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration.

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A. Any combination of vehicles, including the operation of all vehicles under class B and class C.

(2) Class B. Any bus, any single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds, any bus or single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class C.

(3) Class C. Any of the following:

(A) Any truck tractor weighing less than 26,001 pounds gross vehicle weight or truck tractor towing a semitrailer weighing less than 10,000 pounds gross vehicle weight, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any two-axle or three-axle housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle weighing less than 26,001 pounds gross vehicle weight, any three-axle housecar or vehicle towing another vehicle

weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross, or towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

Class C does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle

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

(c) No driver's license or special driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any special driver certificate, except a special construction equipment certificate or any commercial driver license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

(e) The department may accept a certificate of driving experience that is issued by an employer of the applicant, in lieu of a driving test, on class A or B applications, if the applicant has first qualified for a class C license and has met the other examination requirements for the license for which he or she is applying. The certificate may be submitted as evidence of the applicant's

experience or training in the operation of the types of equipment covered by the license for which he or she is applying.

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

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

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

(i) During the implementation of this section, from January 1, 1989, through December 31, 1992, provisions of this code pertaining to persons holding class 1, 2, 3, or 4 licenses pursuant to Section 12804, shall apply to persons holding class A, B, C, or M licenses pursuant to this section, to the extent that class A, B, C, or M vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

SEC. 2.5. Section 12804.9 of the Vehicle Code is amended to read:

12804.9. (a) (1) The examination shall include all of the following:

(A) A test of the applicant's knowledge and understanding of the provisions of this code governing the operation of vehicles upon the highways.

(B) A test of the applicant's ability to read and understand simple English used in highway traffic and directional signs.

(C) A test of the applicant's understanding of traffic signs and signals, including the bikeway signs, markers, and traffic control devices established by the Department of Transportation.

(D) An actual demonstration of the applicant's ability to exercise ordinary and reasonable control in operating a motor vehicle by driving it under the supervision of an examining officer. The applicant shall submit to an examination appropriate to the type of motor vehicle or combination of vehicles he or she desires a license to drive, except that the department may waive the driving test part of the examination of any applicant who holds a valid license issued by another state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. The examining officer may request to see evidence of financial responsibility for the vehicle prior to supervising the demonstration

of the applicant's ability to operate the vehicle. The examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by this code.

(E) A test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways, and whether any ground exists for refusal of a license under this code.

(2) The examination for a class A or class B license under subdivision (b) shall also include a report of a medical examination of the applicant given not more than two years prior to the date of the application by a physician licensed to practice medicine or by a licensed physician's assistant or nurse practitioner under the supervision of a physician and surgeon licensed to practice medicine. The report shall be on a form approved by the department, the Federal Highway Administration, or the Federal Aviation Administration. In establishing the requirements, consideration may be given to the standards presently required of motor carrier drivers by the Federal Highway Administration

(3) Any physical defect of the applicant, which, in the opinion of the department, is compensated for to ensure safe driving ability, shall not prevent the issuance of a license to the applicant.

(b) Beginning on January 1, 1989, in accordance with the following classifications, any applicant for a driver's license shall be required to submit to an examination appropriate to the type of motor vehicle or combination of vehicles the applicant desires a license to drive:

(1) Class A. Any combination of vehicles, including the operation of all vehicles under class B and class C.

(2) Class B Any bus, any single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds, any bus or single vehicle with three or more axles or a gross vehicle weight rating of 26,001 or more pounds towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class C.

(3) Class C. Any of the following:

(A) Any truck tractor weighing less than 26,001 pounds gross vehicle weight or truck tractor towing a semitrailer weighing less than 10,000 pounds gross vehicle weight, as specified in subdivision (h) of Section 36101, when operated in accordance with subdivision (h) of Section 36101.

(B) Any two-axle or three-axle housecar.

(C) Any three-axle vehicle weighing less than 6,000 pounds gross, any two-axle vehicle weighing less than 26,001 pounds gross vehicle weight, any three-axle housecar or vehicle towing another vehicle weighing less than 6,000 pounds gross, including when a tow dolly is used between the towing vehicle and a towed motor vehicle.

(D) Any two-axle vehicle weighing 4,000 pounds or more unladen when towing a trailer coach not exceeding 9,000 pounds gross, or

towing a trailer or semitrailer not exceeding 9,000 pounds gross, designed and used exclusively for hauling livestock, or towing a trailer not exceeding 9,000 pounds gross used to transport agricultural products from a farm to a processing or handling point, or towing a trailer transporting a boat not exceeding 9,000 pounds gross, when the hauling of livestock or agricultural products or the towing of boats is not for compensation.

(E) Any schoolbus, school pupil activity bus, youth bus, or farm labor vehicle specified in paragraph (1) of subdivision (d).

Class C does not include any bus which is not described in subparagraph (E), nor any two-wheel motorcycle or any two-wheel motor-driven cycle.

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

(c) No driver's license or special driver certificate shall be valid for operating any commercial motor vehicle, as defined in subdivision (b) of Section 15210, any other motor vehicle defined in paragraph (1) or (2) of subdivision (b), or any other vehicle requiring a driver to hold any special driver certificate, except a special construction equipment certificate or any commercial driver license endorsement under Section 15275, unless a medical certificate approved by the department, the Federal Highway Administration, or the Federal Aviation Administration, which has been issued within two years of the date of the operation of that vehicle, is within the licensee's immediate possession, and a copy of the medical examination report from which the certificate was issued is on file with the department. Otherwise the license shall be valid only for operating class C vehicles which are not commercial vehicles, as defined in subdivision (b) of Section 15210, and for operating class M vehicles, if so endorsed, which are not commercial vehicles, as defined in subdivision (b) of Section 15210.

(d) A license or driver certificate issued prior to the enactment of Chapter 7 (commencing with Section 15200) shall be valid to operate the class or type of vehicles specified under the law in existence prior to that enactment until the license or certificate expires or is otherwise suspended, revoked, or canceled.

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

(f) The department may accept a certificate of competence in lieu of a driving test on class M applications, when the certificate is

issued by a law enforcement agency for its officers who operate class M vehicles in their duties, if the applicant has met the other examination requirements for the license for which he or she is applying.

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

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

(i) During the implementation of this section, from January 1, 1989, through December 31, 1992, provisions of this code pertaining to persons holding class 1, 2, 3, or 4 licenses pursuant to Section 12804, shall apply to persons holding class A, B, C, or M licenses pursuant to this section, to the extent that class A, B, C, or M vehicles under this section fall within the definition of class 1, 2, 3, or 4 vehicles under Section 12804.

(j) The amendments made to this section in the 1989–90 Regular Session shall become operative only after federal regulations are in place permitting physician's assistants and nurse practitioners to complete the physicals described in this section.

SEC. 3. It is the intent of the Legislature that the Department of Motor Vehicles inform applicants for drivers' licenses that the examining officer may refuse to examine an applicant who is unable to provide proof of financial responsibility for the vehicle, unless proof of financial responsibility is not required by the Vehicle Code, and that a statement to this effect be included in the department's Driver's License Handbook in all editions reprinted after the effective date of this act.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 12804 of the Vehicle Code proposed by both this bill and AB 1912. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 12804 of the Vehicle Code, and (3) this bill is enacted after AB 1912, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 12804.9 of the Vehicle Code proposed by both this bill and AB 1912. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 12804.9 of the Vehicle Code, and (3) this bill is enacted after AB 1912, in which case Section 2 of this bill shall not become operative.

CHAPTER 1271

An act to amend Section 20451.5 of the Government Code, relating to public retirement systems.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 20451.5 of the Government Code is amended to read:

20451.5. An employee organization, recognized under the provisions of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, and representing employees of a public agency, may ask the board for a quotation of the approximate contribution to this system which would be required of the agency if a specific change was made in the agency's contract with the system, if the employee organization is willing to pay for the cost of that quotation. The board shall furnish copies of its quotation to both the public agency and the employee organization.

CHAPTER 1272

An act to add Section 11580.15 to the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 11580.15 is added to the Insurance Code, to read:

11580.15. Subject to the approval of the Insurance Commissioner, every admitted insurer issuing or renewing motor vehicle liability policies as defined in Section 16054 or 16450 of the Vehicle Code shall, at the time of offering to issue or offering to renew any such policy, disclose to the applicant all discounts that are available from the insurer for that insurance and for any related insurance provided under that policy. The insurer shall disclose any discounts for good drivers, senior drivers, students, multiple cars, and any other discounts that are available from that insurer. The disclosure shall be required for both commercial and personal lines of motor vehicle insurance.

Every insurer that sells insurance through licensed agents or brokers shall disclose to the agents and brokers all of the discounts

that are required to be disclosed to the applicant under this section, and shall require its agents and brokers to make the disclosures required by 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:

In order to provide the auto insurance consumer with better information with which to shop around for auto insurance, and to enhance the availability and affordability of auto insurance coverage, it is necessary that this act take effect immediately.

CHAPTER 1273

An act to amend Sections 10195.5, 10230.4, 10231.6, 10232, and 10232.7 of, to add Sections 10232.5, 10232.6, 10233, 10233.2, 10233.4, 10233.5, 10233.6, 10233.7, 10233.8, and 10233.9 to, to add Article 3 (commencing with Section 10234) to Chapter 2.6 of Part 2 of Division 2 of, to repeal Sections 10232.5 and 10232.8 of, and to repeal Chapter 2.7 (commencing with Section 10235) of Part 2 of Division 2 of, the Insurance Code, relating to insurance.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 10195.5 of the Insurance Code is amended 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 60 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.

SEC. 2. Section 10230.4 of the Insurance Code is amended to read:

10230.4. This chapter shall be known and may be cited as the "Robbins-Roos-La Follette Long-term Care Insurance Act of 1989."

SEC. 3. Section 10231.6 of the Insurance Code is amended to read:

10231.6. "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to any of the following:

(a) One or more employers or labor organizations, or a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organization.

(b) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if that association meets both of the following:

(1) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation.

(2) Has been maintained in good faith for purposes other than obtaining insurance.

(c) An association or a trust or the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering that policy or a certificate within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association or associations have at the outset a minimum of 100 persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance, have been in active existence for at least one year, and have a constitution and bylaws which provide all of the following:

(1) The association or associations hold regular meetings, not less than annually, to further purposes of the members.

(2) Except for credit unions, the association or associations collect dues or solicit contributions from members.

(3) The members have voting privileges and representation on the governing board and committees.

Thirty days after that filing the association or associations shall be deemed to satisfy these organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

(d) A group other than as described in subdivisions (a), (b), and (c), subject to all of the following findings by the commissioner:

(1) The issuance of the group policy or certificate is not contrary to the best interest of the public.

(2) The issuance of the group policy will result in economies of

acquisition or administration.

(3) The benefits are reasonable in relation to the premiums charged.

(4) The use of the true or fictitious name of the group, group master policyholder, group policy, certificate, or any trust or other entity created or used for the marketing of the group policy or certificates is not deceptive or misleading with regard to the status, character, or proprietary or representative capacity of the insurer, group, trust, or other entity.

(e) A life care contract provider which has received a certificate of authority in accordance with Chapter 10 (commencing with Section 1770) of Division 2 of the Health and Safety Code. Any life care contract provider which has not received the certificate of authority from the State Department of Social Services shall be subject to this chapter.

SEC. 4. Section 10232 of the Insurance Code is amended to read:

10232. (a) No group long-term care insurance coverage may be offered or sold to a resident of this state under a group policy issued in another state to a group described in subdivision (d) of Section 10231.6, unless the commissioner has determined that the requirements imposed by subdivision (d) of Section 10231.6 have been met. At least 30 days in advance of advertising, marketing, or offering coverage within this state, an insurer issuing a policy to a group described in subdivision (d) of Section 10231.6 shall accomplish an informational filing with the commissioner which consists of the following materials:

(1) A specimen master policy and certificate.

(2) The corresponding outline of coverage.

(3) Representative advertising materials to be used in this state.

(4) At the option of the insurer, any other documentation which the insurer believes will provide information sufficient to allow the commissioner to determine that the requirements of subdivision (d) of Section 10231.6 have been met or which establishes that the insurance regulatory authority of another state has made a determination that the requirements have been met, or both.

(b) No group long-term care insurance coverage may be offered or sold to a resident of this state under a group policy issued in another state to a group described in subdivision (c) of Section 10231.6, unless, prior to advertising, marketing, or offering that coverage within this state, the association or associations, or the insurer of the association or associations, files evidence with the commissioner that the association or associations have at the outset a minimum of 100 persons, have been organized and maintained in good faith for purposes other than that of obtaining insurance, have been in active existence for at least one year, and have a constitution and bylaws which provide all of the following:

(1) The association or associations hold regular meetings, not less than annually, to further purposes of the members.

(2) Except for credit unions, the association or associations collect

dues or solicit contributions from members.

(3) The members have voting privileges and representation on the governing board and committees.

Thirty days after that filing, the association or associations shall be deemed to satisfy those organizational requirements, unless the commissioner makes the finding that the association or associations do not satisfy those organizational requirements.

The association or associations, or the insurer of the association or associations, shall accompany this organizational filing with an informational filing which consists of the following materials:

(1) A specimen master policy and certificate.

(2) The corresponding outline of coverage.

(3) Representative advertising materials to be used in this state.

(c) Compliance with the informational filings required to be made by this section shall also constitute compliance with the filing requirements of Section 10233.9.

(d) The materials required to be filed with the commissioner by this section shall be filed with the commissioner for informational purposes only, and not for approval purposes.

SEC. 4.1. Section 10232.5 of the Insurance Code is repealed.

SEC. 4.2. Section 10232.5 is added to the Insurance Code, to read:

10232.5. On or after January 1, 1990, no long-term care insurance policy may be delivered or issued for delivery in this state which does any of the following:

(a) Preconditions the availability of benefits on prior hospitalization.

(b) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care.

(c) Preconditions the availability of benefits for community-based care, home health care, or home care on prior institutionalization.

(d) Conditions eligibility for noninstitutional benefits, other than those in subdivision (c), on a prior institutional stay of more than 30 days.

SEC. 4.3. Section 10232.6 is added to the Insurance Code, to read:

10232.6. On or before March 1, 1990, every insurer shall notify, in writing, existing policyholders of long-term care insurance that the current provisions of their policy may be different than policies subject to this chapter, as amended during the 1989–90 Regular Session of the Legislature, and that the policyholders may wish to consider any difference in policy provisions in light of those amendments.

SEC. 5. Section 10232.7 of the Insurance Code is amended to read:

10232.7. (a) An applicant for a long-term care insurance policy or a certificate, other than an applicant for a certificate issued under a group long-term care insurance policy issued to a group as described in subdivisions (a) and (b) of Section 10231.6, shall have the right to return the policy or certificate by first-class United States mail within 30 days of its delivery and to have the premium refunded

if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

(b) The return of a policy or certificate shall void the policy or certificate from the beginning and the parties shall be in the same position as if no policy, certificate, or contract had been issued. All premiums paid and any policy fee paid for the policy shall be fully refunded directly to the applicant by the insurer within 30 days after the policy or certificate is returned.

(c) Notwithstanding Section 10276 or any other law, long-term care insurance policies or certificates to which this section applies shall have a notice prominently printed on the first page of the policy or certificate, or attached thereto, stating in substance the conditions described in subdivisions (a) and (b).

SEC. 6. Section 10232.8 of the Insurance Code is repealed.

SEC. 7. Section 10233 is added to the Insurance Code, to read:

10233. Precedent to the payment of benefits for any care covered by the terms of the policy, any insurer offering long-term care insurance as described in Section 10231.2 may obtain a written declaration by a physician, independent needs assessment agency, or any other source of independent judgment suitable to the insurer that services are necessary.

SEC. 8. Section 10233.2 is added to the Insurance Code, to read:

10233.2. Long-term care insurance may not:

(a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder.

(b) Contain a provision establishing a new waiting period in the event existing coverage is converted to, or replaced by, a new or other form within the same insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

(c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.

(d) Limit or deny benefits to a policyholder or certificate holder diagnosed as having any significant destruction of brain tissue with resultant loss of brain function, including, but not limited to, progressive, degenerative, and dementing illnesses, including, but not limited to, Alzheimer's disease. Where a particular disease can be determined only with an autopsy, "diagnosed" means clinical diagnosis as specified in Section 10123.16. The requirements of this subdivision do not modify any preexisting condition or underwriting standards and do not preclude or limit underwriting in accordance with an insurer's established underwriting standards. On and after July 1, 1989, any outline of coverage used in connection with long-term care insurance coverage issued in this state shall include or have attached thereto a statement in positive terms, to the effect that the coverage described and required by this subdivision is provided. That statement shall describe the coverage and not merely

make reference to this subdivision.

SEC. 9. Section 10233.4 is added to the Insurance Code, to read:

10233.4. No long-term care insurance benefits may be reduced because of out-of-pocket expenditures by the insured or on behalf of the insured by a family member of the insured or by any other individual.

SEC. 10. Section 10233.5 is added to the Insurance Code, to read:

10233.5. (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(b) In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(c) In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(d) The outline of coverage shall be a freestanding document, using no smaller than 10-point type.

(e) The outline of coverage shall contain no material of an advertising nature.

(f) Use of the text and sequence of the text of the outline of coverage set forth in this section is mandatory, unless otherwise specifically indicated.

(g) Text which is capitalized or underscored in the outline of coverage may be emphasized by other means which provide prominence equivalent to capitalization or underscoring.

(h) The outline of coverage shall be in the following form:

"(COMPANY NAME)

(ADDRESS- CITY AND STATE)

(TELEPHONE NUMBER)

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

(Policy Number or Group Master Policy and Certificate Number)

1. This policy is (an individual policy of insurance) ((a group policy) which was issued in the (indicate jurisdiction in which group policy was issued)).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions.

This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) Provide a brief description of the right to return--"free look" provision of the policy.

(b) Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.

4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) (For agents) Neither (insert company name) nor its agents represent Medicare, the federal government or any state government.

(b) (For direct response) (insert company name) is not representing Medicare, the federal government or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations) (waiting periods) and (coinsurance) requirements. (Modify this paragraph if the policy is not an indemnity policy.)

6. BENEFITS PROVIDED BY THIS POLICY.

(a) (Covered services, related deductible(s) waiting periods, elimination periods and benefit maximums.)

(b) (Institutional benefits, by skill level.)

(c) (Noninstitutional benefits, by skill level.)

(Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.)

7. LIMITATIONS AND EXCLUSIONS.

(Describe:

(a) Preexisting conditions.

(b) Noneligible facilities/provider.

(c) Noneligible levels of care (e.g., unlicensed providers, care or treatments provided by a family member, etc.).

(d) Exclusions/exceptions.

(e) Limitations.)

(This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.)

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, indicate the following:

(a) That the benefit level will NOT increase over time.

(b) Any automatic benefit adjustment provisions.

(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage.

(d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations.

(e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) Describe the policy renewability provisions.

(b) For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.

(c) Describe waiver of premium provisions or state that there are no such provisions.

(d) State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which the premium may change.

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

(State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's Disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.)

11. PREMIUM.

(a) State the total annual premium for the policy.

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which

corresponds to each benefit option.

12. ADDITIONAL FEATURES.

(a) Indicate if medical underwriting is used.

(b) Describe other important features.

13. INFORMATION AND COUNSELING. The California Department of Insurance has prepared a Consumer Guide to Long-Term Care Insurance. This guide can be obtained by calling the Department of Insurance toll-free telephone number. This number is 1-800-233-9045. Additionally, the Health Insurance Counseling and Advocacy Program (HICAP) administered by the California Department of Aging, provides long-term care insurance counseling to California senior citizens. If you would like to take benefit of this program, call the Department of Insurance toll-free telephone number for a referral to your local HICAP representative.

1-800-233-9045"

SEC. 11. Section 10233.6 is added to the Insurance Code, to read:

10233.6. A certificate issued pursuant to a group long-term care insurance policy, which policy is delivered or issued for delivery in this state, shall include all of the following:

(a) A description of the principal benefits and coverage provided in the policy.

(b) A statement of the principal exclusions, reductions, and limitations contained in the policy.

(c) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums.

(d) A statement that the group master policy determines governing contractual provisions.

SEC. 12. Section 10233.7 is added to the Insurance Code, to read:

10233.7. No policy may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this chapter.

SEC. 13. Section 10233.8 is added to the Insurance Code, to read:

10233.8. A television, radio, mail, or newspaper advertisement which is designed to produce leads either by use of a coupon or a request to write to an insurer, producer, or any other person, or a subsequent advertisement prior to contact in regard to long-term care insurance shall include a prominent disclosure that a licensed or authorized agent may contact the prospective applicant, if that is the fact.

SEC. 14. Section 10233.9 is added to the Insurance Code, to read:

10233.9. Any insurer offering long-term care insurance under this chapter shall provide to the Department of Insurance, for the commissioner's conveyance to the Department of Aging, a copy of the following materials for all long-term care insurance coverage advertised, marketed, or offered by that insurer in this state:

(a) Specimen individual policy form or group master policy and certificate forms.

(b) Corresponding outline of coverage.

(c) Representative advertising materials to be used in this state.

SEC. 15. Article 3 (commencing with Section 10234) is added to Chapter 2.6 of Part 2 of Division 2 of the Insurance Code, to read:

Article 3. Administration and Enforcement

10234. The commissioner shall, as required by this chapter, or from time to time as conditions warrant, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt reasonable regulations, and amendments and additions thereto, as are necessary to administer this chapter.

10234.4. Pursuant to Section 10198, the commissioner may levy administrative penalties under subdivisions (a) and (b) of Section 10198.1, and may suspend or revoke the license or licenses issued to any production agent found, after notice and hearing, to have violated this chapter or a regulation adopted pursuant to the authority of this chapter. Notice of hearing shall be accomplished and a hearing 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 commissioner shall have all of the powers granted therein.

10234.5. In addition to any other penalty provided by law or the availability of any administrative procedure, if an insurer, after notice and hearing, is found to have violated this chapter, or regulations adopted pursuant to this chapter, or knowingly permits any person to do so, the commissioner, in accordance with the procedures provided in Section 704, may suspend the insurer's certificate of authority to transact disability insurance. Section 704.7 shall apply in any proceeding conducted pursuant to this section.

10234.6. (a) On or before September 1, 1991, and on or before every September 1 thereafter, the commissioner shall report to the Legislature regarding all of the following aspects of long-term care insurance:

(1) Loss ratios in California and nationwide, by policy form number plus a summary and description of the data used as the basis for that analysis.

(2) Means and devices alternative to loss ratio standards which may be under consideration by the commissioner for determining whether the benefits under long-term care insurance are reasonable in relation to premiums charged.

(3) The insurers offering coverage that includes home-based long-term care services in California, by policy form number plus a summary describing the specific types of services covered.

(4) The insurers offering coverage that includes community-based long-term care services in California, by policy form number plus a summary describing the specific types of services covered.

(b) The commissioner shall adopt a standard submittal form for insurers to attach to new long-term care insurance policies and certificates at the time they are submitted for the commissioner's review. The information specified on the standard form shall include, but not be limited to, all categories of information required to facilitate preparation of the report required by paragraphs (3) and (4) of subdivision (a).

10234.7. The commissioner's annual report to the Legislature, as required by Section 10234.6, shall be compiled in consultation with a task force designated by the commissioner for this purpose, which shall include insurance industry representatives, other individuals deemed appropriate by the commissioner, and one or more representatives from each of the following:

(a) The Health Insurance Counseling and Advocacy Program.

(b) The California Health Policy and Data Advisory Commission.

The commissioner shall have the responsibility, in consultation with the task force, to develop analytic methods and to select indicators for evaluation of the impact of long-term care insurance on the public share of costs for long-term care.

SEC. 16. Chapter 2.7 (commencing with Section 10235) of Part 2 of Division 2 of the Insurance Code is repealed.

SEC. 17. It is the intent of the Legislature in enacting this act to consolidate the provisions of Chapter 2.6 (commencing with Section 10230) of Part 2 of Division 2 of the Insurance Code, and the provisions of Chapter 2.7 (commencing with Section 10235) of Part 2 of Division 2 of the Insurance Code, by repealing the latter chapter, and by adding comparable provisions to the former chapter. Accordingly, insofar as the provisions of this act are substantially the same as preexisting law, they shall be construed as a continuation of preexisting law.

CHAPTER 1274

An act to add Section 3572.5 to the Elections Code, relating to elections.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 3572.5 is added to the Elections Code, to read:

3572.5. (a) At each statewide election at which state bond measures will be submitted to the voters for their approval or rejection, the ballot pamphlet for that election shall include a discussion, prepared by the Legislative Analyst, of the state's current bonded indebtedness situation.

(b) This discussion shall include information as to the dollar amount of the state's current authorized and outstanding bonded indebtedness, the approximate percentage of the state's General Fund revenues which are required to service this indebtedness, and the expected impact of the issuance of the bonds to be approved at the election on the items specified in this subdivision.

(c) The discussion required by this section shall appear on a separate page in the ballot pamphlet immediately following the rebuttal to the argument against the last ballot measure included in the ballot pamphlet.

CHAPTER 1275

An act to amend Sections 10231.1, 10232.25, 10232.4, 10237.8, 10241, 10241.1, 10242.5, 10245, and 10248.1 of the Business and Professions Code, relating to real estate.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 10231.1 of the Business and Professions Code is amended to read:

10231.1. No person in doing any of the acts set forth in subdivision (d) of Section 10131, subdivision (e) of Section 10131, and Section 10131.1 shall, as agent or principal, retain funds payable according to the terms of a promissory note or real property sales contract secured directly or collaterally by a lien on real property, for a period longer than 60 days, except pursuant to a written agreement with the purchaser or lender.

SEC. 2. Section 10232.25 of the Business and Professions Code is amended to read:

10232.25. (a) A real estate broker who meets the criteria of subdivision (a) of Section 10232 shall, within 30 days after the end of each of the first three fiscal quarters of the broker's fiscal year, or within such additional time as the Real Estate Commissioner may allow for good cause, file with the commissioner a trust funds status report as of the last day of the fiscal quarter which shall include the following:

(1) A representation that the form and content of the trust account records of the broker are in compliance with the regulations of the Real Estate Commissioner.

(2) A representation that the broker's trust fund bank account is maintained in compliance with the regulations of the Real Estate Commissioner.

(3) A statement of the broker's aggregate accountability for trust funds.

(4) A report of trust funds in the broker's custody consisting of the trust account bank statements as of the bank's accounting date immediately preceding the end of the fiscal quarter and a schedule of withdrawals and deposits adjusting the account to its true balance as of the end of the fiscal quarter.

(5) A statement explaining any difference in amount between the broker's total accountability under paragraph (3) above and the adjusted trust account bank balance under paragraph (4) above.

(b) Each report made pursuant to subdivision (a) shall include the following:

(1) The name, address, and position or capacity of the person who prepared the report.

(2) A declaration under penalty of perjury by the broker that the information and representations in the report are true, complete, and correct to the best of the broker's knowledge and belief. The declaration in a report submitted on behalf of a corporate broker shall be signed by a broker-officer through whom the corporation is licensed as a real estate broker and by the chief executive officer of the corporation if he or she is not the signing broker-officer.

(c) If a broker fails to file a report required under subdivision (a) within the time permitted, the commissioner may cause an examination and report to be made and may charge the broker one and one-half times the cost of making the examination and report.

(d) A broker who meets the criteria of Section 10232, but who, in carrying on the activities described in subdivisions (d) and (e) of Section 10131, did not during a fiscal quarter, accept for the benefit of a person to whom the broker is trustee, any payment or remittance in a form convertible to cash by the broker, need not comply with the provisions of subdivision (a). In lieu thereof, the broker shall submit to the commissioner within 30 days after the end of the fiscal quarter or within such additional time as the commissioner may allow for good cause, a statement under penalty of perjury on a form provided by the department attesting to the fact that the broker did not receive any trust funds in cash or convertible to cash during the fiscal quarter.

(e) Any real estate broker who engages in any of the activities specified in subdivision (d) or (e) of Section 10131, but who is not required by this section to file trust funds status reports with the commissioner and who is not exempt therefrom under subdivision (d), shall complete trust funds status reports in accordance with the requirements of subdivisions (a) and (b) applicable to trust funds status reports filed with the commissioner. The broker shall retain all trust funds status reports prepared under this subdivision on file at the broker's offices, where they shall be subject to inspection by representatives of the commissioner upon 24 hours' notice.

SEC. 3. Section 10232.4 of the Business and Professions Code is amended to read:

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property

or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of four years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to Article 6 (commencing with Section 10237) of this chapter or applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) which requires that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veterans' Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, a savings bank or savings and loan association or subsidiary, credit union, industrial bank or industrial

loan company, personal property broker, commercial finance lender, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph A, B, C, or D which is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 60 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

SEC. 4. Section 10237.8 of the Business and Professions Code is amended to read:

10237.8. Every real property securities dealer shall file and maintain with the commissioner a cash deposit, cash equivalent, or bond in the penal sum of ten thousand dollars ($10,000), executed by an admitted surety insurer approved by the commissioner, and running to the people of the State of California, for the use and benefit of interested persons. The bond shall be conditioned upon the dealer complying with all the provisions of this article, performing and complying with all obligations assumed by the dealer, and honest and faithful application of all funds received.

SEC. 5. Section 10241 of the Business and Professions Code is amended to read:

10241. The statement required by Section 10240, the form of which shall be approved by the commissioner, shall set forth separately the following items:

(a) The estimated maximum costs and expenses of making the loan, which are to be paid by the borrower, including, but not limited

to, the following:

(1) Appraisal fees.

(2) Escrow fees.

(3) Title charges.

(4) Notary fees.

(5) Recording fees.

(6) Credit investigation fees.

If a real estate licensee performs or is to perform any of the services for which costs and expenses are disclosed pursuant to this subdivision, the licensee shall be entitled to those costs and expenses in addition to the charges specified in subdivision (b).

(b) The total of the brokerage or commissions contracted for, or to be received by, the real estate broker for services performed as an agent in negotiating, procuring, or arranging the loan or the total of loan origination fees, points, bonuses, and other charges in lieu of interest to be received by the broker if he or she elects to act as a lender rather than agent in the transaction.

(c) Any liens against the real property, as disclosed by the borrower, the approximate amount thereof, and whether each lien will remain senior, or will be subordinate, to the lien that will secure the loan.

(d) The estimated amounts to be paid on the order of the borrower, as disclosed by the borrower, including, but not limited to:

(1) Fire insurance premiums.

(2) Amounts due on prior liens, including interest or other charges arising in connection with the payment, release, reconveyance, extinction, or other removal of record of the prior liens.

(3) Amounts due other creditors.

(4) Assumption, transfer, forwarding, and beneficiary statement fees.

(e) The estimated balance of the loan funds to be paid to the borrower after deducting the total of amounts disclosed pursuant to subdivisions (a), (b) and (d).

(f) The principal amount of the loan.

(g) The rate of interest.

(h) The term of the loan, the number of installments, the amount of each installment, and the approximate balance due at maturity.

(i) A statement containing the name of the real estate broker negotiating the loan, his or her license number, and the address of his or her licensed place of business.

(j) If the broker anticipates that the loan to the borrower may be made wholly or in part from broker-controlled funds, a statement to that effect.

For purposes of this section, "broker-controlled funds" means funds owned by the broker, by a spouse, child, parent, grandparent, brother, sister, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the broker, or by any entity in which the broker alone or together with any of the above relatives of the broker has an

ownership interest of 10 percent or more.

(k) The terms of prepayment privileges and penalties, if any.

(*l*) A statement that the purchase of credit or credit disability insurance is not required as a condition for the making of the loan.

(m) If the loan is one that is within the limits specified in Section 10245, a certification by the real estate licensee negotiating the loan that the loan is being made in compliance with the provisions of this article.

SEC. 5.5. Section 10241 of the Business and Professions Code is amended to read:

10241. The statement required by Section 10240, the form of which shall be approved by the commissioner, shall set forth separately the following items:

(a) The estimated maximum costs and expenses of making the loan, which are to be paid by the borrower, including but not limited to, the following:

(1) Appraisal fees.

(2) Escrow fees.

(3) Title charges.

(4) Notary fees.

(5) Recording fees.

(6) Credit investigation fees.

If a real estate licensee performs or is to perform any of the services for which costs and expenses are disclosed pursuant to this subdivision, the licensee shall be entitled to those costs and expenses in addition to the charges specified in subdivision (b).

(b) The total of the brokerage or commissions contracted for, or to be received by, the real estate broker for services performed as an agent in negotiating, procuring, or arranging the loan or the total of loan origination fees, points, bonuses, and other charges in lieu of interest to be received by the broker if he or she elects to act as a lender rather than agent in the transaction.

(c) Any liens against the real property, as disclosed by the borrower, the approximate amount thereof, and whether each lien will remain senior, or will be subordinate, to the lien that will secure the loan.

(d) The estimated amounts to be paid on the order of the borrower, as disclosed by the borrower, including, but not limited to:

(1) Fire insurance premiums.

(2) Amounts due on prior liens, including interest or other charges arising in connection with the payment, release, reconveyance, extinction, or other removal of record of the prior liens.

(3) Amounts due other creditors.

(4) Assumption, transfer, forwarding, and beneficiary statement fees.

(e) The estimated balance of the loan funds to be paid to the borrower after deducting the total of amounts disclosed pursuant to subdivisions (a), (b), and (d).

(f) The principal amount of the loan.

(g) The rate of interest.

(h) The term of the loan, the number of installments, the amount of each installment, and the approximate balance due at maturity, and the following notice in 10-point bold typeface:

"NOTICE TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN IT COMES DUE, YOU MAY HAVE TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY TO MAKE THE BALLOON PAYMENT. IN THAT CASE, YOU MAY AGAIN HAVE TO PAY COMMISSIONS, FEES, AND EXPENSES FOR THE ARRANGING OF THE NEW LOAN. IN ADDITION, IF YOU ARE UNABLE TO MAKE THE MONTHLY PAYMENTS OR THE BALLOON PAYMENT, YOU MAY LOSE THE PROPERTY AND ALL OF YOUR EQUITY THROUGH FORECLOSURE. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THIS LOAN."

(i) A statement containing the name of the real estate broker negotiating the loan, his or her license number, and the address of his or her licensed place of business.

(j) If the broker anticipates that the loan to the borrower may be made wholly or in part from broker-controlled funds, a statement to that effect.

For purposes of this section, "broker-controlled funds" means funds owned by the broker, by a spouse, child, parent, grandparent, brother, sister, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the broker, or by any entity in which the broker alone or together with any of the above relatives of the broker has an ownership interest of 10 percent or more.

(k) The terms of prepayment privileges and penalties, if any.

(*l*) A statement that the purchase of credit or credit disability insurance is not required as a condition for the making of the loan.

(m) If the loan is one that is within the limits specified in Section 10245, a certification by the real estate licensee negotiating the loan that the loan is being made in compliance with the provisions of this article.

SEC. 6. Section 10241.1 of the Business and Professions Code is amended to read:

10241.1. (a) The purchase of credit life insurance on the life of the borrower or credit disability insurance to provide indemnity for payments becoming due on the indebtedness shall not be required as a condition of making a loan under this article.

(b) The licensee may provide through duly licensed agents, and collect from the borrower the costs of purchasing, credit life insurance on the life of a borrower and credit disability insurance to provide indemnity for payments becoming due on the indebtedness, with the borrower's consent. The form and rate of the insurance shall be approved by the Insurance Commissioner, as provided in Section 779.9 of the Insurance Code. The insurance shall be in an amount not in excess of that reasonably necessary to discharge the obligation of

the borrower, and for a term not exceeding the term of the loan. Only one premium for credit disability insurance may be collected by the licensee in connection with any loan contract irrespective of the number of borrowers, and only one borrower may be insured, except that where more than one borrower is a party to a loan contract and each borrower is a wage earner whose earnings are reasonably relied upon by the lender for the repayment of the loan, each borrower may be insured.

(c) The licensee may collect from the borrower the costs of purchasing fire and hazard insurance on the property offered as security for a loan in order to reasonably insure against loss for a reasonable term considering the circumstances of the loan, (1) if the policy or policies of insurance are made payable to the borrower or any member of his or her family, regardless of whether a customary mortgagee clause is attached, and (2) if the insurance is sold at standard rates through duly licensed agents.

(d) If premiums for any insurance provided under this section are to be paid from the proceeds of the loan, any amount so paid and any commission under subdivision (b) of Section 10242 attributable to borrowing that amount, shall not be considered in determining whether the loan is exempt from this article under Section 10245.

SEC. 7. Section 10242.5 of the Business and Professions Code is amended to read

10242.5. (a) A charge imposed for late payment of an installment due on a loan secured by a mortgage or deed of trust on real property shall not exceed an amount equal to 10 percent of the installment due, except that a minimum charge of five dollars ($5) may be imposed when the late charge permitted by this section would otherwise be less than that minimum charge.

The charge permitted by this section may be assessed only as a percentage of the increment of any installment due that is attributable to principal and interest.

(b) No charge may be imposed more than once for the same late payment of an installment. No late charge may be imposed on any installment which is paid or tendered in full within 10 days after its scheduled due date, even though an earlier maturing installment or a late charge on an earlier installment may not have been paid in full. For purposes of this subdivision, a payment or tender of payment made within 10 days of a scheduled installment due date shall be deemed to have been made or tendered for payment of that installment.

(c) A late-payment charge may be imposed pursuant to this subdivision for the payment of any balloon payment more than 10 days after the date due. The charge shall not exceed an amount equal to the maximum late charge that could have been assessed with respect to the largest single monthly installment previously due, other than the balloon payment, multiplied by the sum of one plus the number of months occurring since the late-payment charge began to accrue. For purposes of this subdivision, "month" means the

period between a particular day of a calendar month and the same day of the next calendar month.

SEC. 8. Section 10245 of the Business and Professions Code is amended to read:

10245. The provisions of this article, exclusive of the provisions of Sections 10240, 10242.5, and 10242.6, do not apply to any bona fide loan secured directly or collaterally by a first trust deed, the principal of which is twenty thousand dollars ($20,000) or more, or to any bona fide loan secured directly or collaterally by any lien junior thereto, the principal of which is ten thousand dollars ($10,000) or more

SEC. 9. Section 10248 1 of the Business and Professions Code is amended to read:

10248.1. No real estate licensee shall charge, receive, or negotiate for the payment by the borrower of any service charge or fee other than charges and fees specified in Sections 10241, 10241.1, 10242, and 10242.5, prepayment penalties as authorized by law, beneficiary-statement, payoff-demand, extinction, release, reconveyance or other removal of record fees, and trustee's costs and fees, and any other fees if in accordance with the Civil Code and the Code of Civil Procedure.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 10241 of the Business and Professions Code proposed by both this bill and SB 1128. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 10241 of the Business and Professions Code, and (3) this bill is enacted after SB 1128, in which case Section 5 of this bill shall not become operative.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1276

An act to amend, repeal, and add Section 14300 of, and to add and repeal Chapter 3.2 (commencing with Section 14340) of Division 12 of, the Public Resources Code, relating to the California Conservation Corps.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 14300 of the Public Resources Code is amended to read:

14300. Young women and men participating in the corps program shall generally be engaged in projects which do the following:

(a) Preserve, maintain, and enhance environmentally important lands and waters.

(b) Accomplish useful and needed public works projects in both urban and rural areas.

(c) Conserve, maintain, improve, and develop natural resources in both urban and rural areas.

(d) Provide opportunities for public use of the areas, projects, and resources described in subdivisions (a), (b), and (c).

(e) Assist in emergency operations, such as natural disaster relief and the rescue of lost and injured persons.

(f) Assist in fire prevention and suppression.

(g) Directly contribute to the conservation of energy.

(h) Contribute toward making public facilities accessible to persons with disabilities.

(i) Assist other departments within the Resources Agency in developing, rehabilitating, and restoring parklands, recreational facilities, and historical resources; restoring salmon and steelhead spawning, nursery, and rearing habitat; restoring and preserving wildlife habitat; and enhancing reforestation in both urban and rural areas.

(j) Improve the appearance of rundown neighborhoods by improving public buildings.

(k) Maintain key municipal facilities by providing maintenance and beautification services for facilities operated by parks and recreation agencies, and for public transit, coliseums and theaters in urban areas.

Subdivisions (j) and (k) shall become operative only if, and at the time that, federal funds are made available for purposes of those subdivisions.

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.

SEC. 2. Section 14300 is added to the Public Resources Code, to read:

14300. Young women and men participating in the corps program shall generally be engaged in projects which do the following:

(a) Preserve, maintain, and enhance environmentally important lands and waters.

(b) Accomplish useful and needed public works projects in both urban and rural areas.

(c) Conserve, maintain, improve, and develop natural resources in both urban and rural areas.

(d) Provide opportunities for public use of the areas, projects, and resources described in subdivisions (a), (b), and (c).

(e) Assist in emergency operations, such as natural disaster relief and the rescue of lost and injured persons.

(f) Assist in fire prevention and suppression.

(g) Directly contribute to the conservation of energy.

(h) Contribute toward making public facilities accessible to persons with disabilities.

(i) Assist other departments within the Resources Agency in developing, rehabilitating, and restoring parklands, recreational facilities, and historical resources; restoring salmon and steelhead spawning, nursery, and rearing habitat; restoring and preserving wildlife habitat; and enhancing reforestation in both urban and rural areas.

This section shall become operative on January 1, 1993

SEC. 3. Chapter 3.2 (commencing with Section 14340) is added to Division 12 of the Public Resources Code, to read:

CHAPTER 3.2. URBAN SERVICES AND RESTORATION CORPS

14340. (a) The Legislature finds and declares that the Urban Services Restoration Corps (USRC), a component of the California Conservation Corps, is an innovative approach to diverting young people in urban areas from the detrimental influences of unlawful drug activity and gang violence. The corps assists those who join through the disciplined work projects that they perform according to Section 14300 and by providing opportunties through education programs.

(b) In carrying out this division, public housing authorities are encouraged to work with the corps and to recognize the corps as an innovative program when seeking funds under the Anti-Drug Abuse Act of 1988 (Public Law 100-690), which provides for grants by the Secretary of Housing and Urban Development for innovative programs to reduce drug-related crime, including recreational, vocational, education, and other constructive alternatives for youth.

14341. This chapter shall become operative only if, and at the time that, federal funds are made available for the purposes of this chapter.

14342. 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.

CHAPTER 1277

An act to amend Sections 51010.6, 51011, 51013, 51013.5, 51014, 51014.3, 51015, 51018.6, and 51018.7 of, and to add Section 51016 to, the Government Code, relating to pipeline safety, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989.]

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

SECTION 1. This act shall be known and may be cited as the Hazardous Liquid Pipeline Amendments of 1989.

SEC. 2. Section 51010.6 of the Government Code is amended to read:

51010.6. Notwithstanding Section 51010.5, that portion of an interstate pipeline which is located within this state and is subject to an agreement between the United States Secretary of Transportation and the State Fire Marshal is subject to the federal Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. Sec. 2001 et seq.), the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100-561), and federal pipeline safety regulations.

SEC. 2.5. Section 51011 of the Government Code is amended to read:

51011. The State Fire Marshal shall adopt hazardous liquid pipeline safety regulations in compliance with the federal law relating to hazardous liquid pipeline safety (Chapter 29 (commencing with Section 2001) of Title 49 of the United States Code) and the regulations adopted pursuant thereto (Title 49 of the Code of Federal Regulations, Part 195), including, but not limited to, compliance orders, penalties, and inspection and maintenance provisions, and including amendments to those laws and regulations which may be hereafter enacted and adopted.

The State Fire Marshal may exempt the application of regulations adopted pursuant to this section to any pipeline, or portion thereof, when it is determined that the risk to public safety is slight and the probability of injury or damage remote.

Notification of exemptions shall be written, and shall include a discussion of those factors which the State Fire Marshal considers significant to the granting of the exemption.

SEC. 3. Section 51013 of the Government Code is amended to read:

51013. (a) Any new pipeline constructed after January 1, 1984,

and which normally operates under conditions of constant flow and pressure, shall be designed and constructed in accordance with Subparts C and D of Part 195 of Title 49 of the Code of Federal Regulations, and shall include a means of leak detection and cathodic protection which the State Fire Marshal determines is acceptable, except that any pipeline which transports by gravity or operates at a stress level of 20 percent or less of the specified minimum yield strength of the pipe shall meet these design and construction requirements on or before January 1, 1991.

(b) Any new pipeline on which construction begins after January 1, 1990, shall be designed to accommodate the passage of instrumented internal inspection devices, and shall have leak mitigation and emergency response plans and equipment as the State Fire Marshal may require. Any repairs to existing pipelines which can accommodate instrumented internal inspection devices shall be done in a manner not to interfere with the passage of these devices.

(c) Subdivision (a) does not apply to the replacement of valves and the relocation or replacement of portions of pipelines.

(d) For pipelines which cannot accommodate internal inspection devices, replacements of portions of the pipe shall be done in a manner consistent, to the extent practicable, with the eventual accommodation of instrumented internal inspection devices.

SEC. 4. Section 51013.5 of the Government Code is amended to read:

51013.5. (a) Every newly constructed pipeline, existing pipeline, or part of a pipeline system that has been relocated or replaced, and every pipeline that transports a hazardous liquid substance or highly volatile liquid substance, shall be tested in accordance with Subpart E (commencing with Section 195.300) of Part 195 of Title 49 of the Code of Federal Regulations.

(b) Every pipeline not provided with properly sized automatic pressure relief devices or properly designed pressure limiting devices shall be hydrostatically tested annually.

(c) Every pipeline over 10 years of age and not provided with effective cathodic protection shall be hydrostatically tested every three years, except for those on the State Fire Marshal's list of higher risk pipelines, which shall be hydrostatically tested annually.

(d) Every pipeline over 10 years of age and provided with effective cathodic protection shall be hydrostatically tested every five years, except for those on the State Fire Marshal's list of higher risk pipelines which shall be hydrostatically tested every two years.

(e) Beginning on July 1, 1990, and continuing until the regulations adopted by the State Fire Marshal pursuant to subdivision (f) take effect, each pipeline within the State Fire Marshal's jurisdiction which satisfies any of the following sets of criteria shall be placed on the State Fire Marshal's list of higher risk pipelines until five years pass without a reportable leak due to corrosion or defect on that pipeline. Initially, pipelines on that list shall be tested by the next

scheduled test date, or within two years of being placed on the list, whichever is first. On July 1, 1990, pipeline operators shall provide the State Fire Marshal with a list of all their pipelines which satisfy the criteria in this subdivision as of July 1, 1990. Should any pipeline become eligible for the list of higher risk pipelines after that date, the pipeline company shall report that fact to the State Fire Marshal within 30 days, and the pipeline shall be placed on the list retroactively to the date on which it became eligible for listing. Pipelines which are found to belong on the list, but are not so reported by the operator to the State Fire Marshal, shall be placed on the list retroactively. Operators failing to properly report their pipelines shall be subject to penalties under Section 51018.6. Pipelines not covered under the risk criteria developed pursuant to subdivision (f) shall be deleted from the list when regulations are adopted pursuant to that subdivision. For purposes of this subdivision, a leak which is traceable to an external force, but for which corrosion is partly responsible, shall be deemed caused by corrosion, "defect" refers to manufacturing or construction defects, and "leak" or "reportable leak" means a rupture required to be reported pursuant to Section 51018. As long as all pipelines are tested in their entirety at least as frequently as standard risk pipelines under subdivisions (c) and (d), it shall suffice for additional tests on higher risk pipelines to cover 20 pipeline miles in all directions along an operator's pipeline from the position of the leak or leaks which led to the inclusion or retention of that pipeline on the higher risk list. The interim list shall include pipelines which meet any of the following criteria:

(1) Have suffered two or more reportable leaks, not including leaks during a certified hydrostatic pressure test, due to corrosion or defect in the prior three years.

(2) Have suffered three or more reportable leaks, not including leaks during a certified hydrostatic pressure test, due to corrosion, defects, or external forces, but not all due to external forces, in the prior three years.

(3) Have suffered a reportable leak, except during a certified hydrostatic pressure test, due to corrosion or defect of more than 50,000 gallons, or 10,000 gallons in a standard metropolitan statistical area, in the prior three years; or have suffered a leak due to corrosion or defect which the State Fire Marshal finds has resulted in more than 42 gallons of a hazardous liquid within the State Fire Marshal's jurisdiction entering a waterway in the prior three years; or have suffered a reportable leak of a hazardous liquid with a flashpoint of less than 140 degrees Fahrenheit, or 60 degrees centigrade, in the prior three years.

(4) Are less than 50 miles long, and have experienced a reportable leak, except during a certified hydrostatic pressure test, due to corrosion or a defect in the prior three years. For the purposes of this paragraph, the length of a pipeline with more than two termini shall be the longest distance between two termini along the pipeline.

(5) Have experienced a reportable leak in the prior five years due to corrosion or defect, except during a certified hydrostatic pressure test, on a section of pipe more than 50 years old. For pipelines which fall in this category, and no other category of higher risk pipeline, additional tests required by this subdivision shall be required only on segments of the pipe more than 50 years old as long as all pipe more than 50 years old which is within 20 pipeline miles from the leak in all directions along an operator's pipeline is tested.

(f) The State Fire Marshal shall study indicators and precursors of serious pipeline accidents, and, in consultation with the Hazardous Liquid Pipeline Technical Standards Committee, or the Pipeline Safety Advisory Committee on and after the date Assembly Bill 385 of the 1989–90 Regular Session of the Legislature is enacted and becomes effective, shall develop criteria for identifying which hazardous liquid pipelines pose the greatest risk to people and the environment due to the likelihood of, and likely seriousness of, an accident due to corrosion or defect. The study shall give due consideration to research done by the industry, the federal government, academia, and to any other information which the State Fire Marshal shall deem relevant, including, but not limited to, recent leak history, pipeline location, and materials transported. Beginning January 1, 1992, using the criteria identified in that study, the State Fire Marshal shall maintain a list of higher risk pipelines, which exceed a standard of risk to be determined by the State Fire Marshal, and which shall be tested as required in subdivisions (c) and (d) as long as they remain on the list. By January 1, 1992, after public hearings, the State Fire Marshal shall adopt regulations to implement this subdivision.

(g) In addition to the requirements of subdivisions (a) to (d), inclusive, the State Fire Marshal may require any pipeline subject to this chapter to be subjected to a pressure test, or any other test or inspection, at any time, in the interest of public safety.

(h) Test methods other than the hydrostatic tests required by subdivisions (b), (c), and (d), including inspection by instrumented internal inspection devices, may be approved by the State Fire Marshal on an individual basis. If the State Fire Marshal approves an alternative to a pressure test in an individual case, the State Fire Marshal may require that the alternative test be given more frequently than the testing frequencies specified in subdivisions (b), (c), and (d).

(i) The State Fire Marshal shall adopt regulations before January 1, 1992, to establish what the State Fire Marshal deems to be an appropriate frequency for tests and inspections, including instrumented internal inspections, which, when permitted as a substitute for tests required under subdivisions (b), (c), and (d), do not damage pipelines or require them to be shut down for the testing period. That testing shall in no event be less frequent than is required by subdivisions (b), (c), and (d). Each time one of these tests is required on a pipeline, it shall be approved on the same individual

basis as under subdivision (h). If it is not approved, a hydrostatic test shall be carried out at the time the alternative test would have been carried out, and subsequent tests shall be carried out in accordance with the time intervals prescribed by subdivision (b), (c), or (d), as applicable.

SEC. 5. Section 51014 of the Government Code is amended to read:

51014. (a) The pressure tests required by subdivisions (b), (c), and (d) of Section 51013.5 shall be conducted in accordance with Subpart E (commencing with Section 195.300) of Part 195 of Title 49 of the Code of Federal Regulations, except that an additional four-hour leak test, as specified in subsection (c) of Section 195.302 of Title 49 of the Code of Federal Regulations, shall not be required under subdivisions (b), (c), and (d) of Section 51013.5. The State Fire Marshal may authorize the use of liquid petroleum having a flashpoint over 140 degrees Fahrenheit or 60 degrees Centigrade as the test medium. The State Fire Marshal shall make these authorizations in writing. Pressure tests performed under subdivisions (b), (c), and (d) of Section 51013.5 shall not show an hourly change for each section of the pipeline under test at the time in excess of either 10 gallons or the sum of one gallon and an amount computed at a rate in gallons per mile equivalent to one-tenth of the nominal internal diameter of the pipe in inches.

(b) Test pressure shall be at least 125 percent of the actual pipeline operating pressure.

SEC. 5.5. Section 51014.3 of the Government Code is amended to read:

51014.3. (a) Each pipeline operator shall notify the State Fire Marshal and the local fire department having fire suppression responsibilities at least three working days prior to conducting a hydrostatic test which is required by this chapter. The notification shall include all of the following information:

(1) The name, address, and telephone number of the pipeline operator.

(2) The specific location of the pipeline section to be tested and the location of the test equipment.

(3) The date and time the test is to be conducted.

(4) An invitation and a telephone number for local fire departments to call for further information on what they should do in the event of a leak during testing.

(5) The test medium.

(6) The name and telephone number of the independent testing firm or person responsible for certification of the test results.

(b) The State Fire Marshal may observe tests conducted pursuant to this chapter.

SEC. 6. Section 51015 of the Government Code is amended to read:

51015. (a) Every pipeline operator shall provide to the fire department having fire suppression responsibilities a map or suitable

diagram showing the location of the pipeline, a description of all products transported within the pipeline, and a contingency plan for pipeline emergencies which shall include, but not be limited to any reasonable information which the State Fire Marshal may require.

(b) A pipeline operator shall make available to the State Fire Marshal, or any officers or employees authorized by the State Fire Marshal, upon presentation of appropriate credentials, any records, maps, and written procedures that are required, by this chapter, to be kept by the pipeline operator and which concern accident reporting, design, construction, testing, or operation and maintenance.

The State Fire Marshal, or any officer or employee authorized by the State Fire Marshal, may enter, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of any pipeline operators that are required to be inspected and examined to determine whether the pipeline operator is in compliance with this chapter.

(c) Every pipeline operator shall offer to meet with the local fire department having fire suppression responsibilities at least once each calendar year to discuss and review contingency plans for pipeline emergencies.

SEC. 6.5. Section 51016 is added to the Government Code, to read:

51016. The State Fire Marshal shall study the spacing of valves which would limit spillage into standard metropolitan statistical areas and environmentally sensitive areas from surrounding higher ground. If any existing pipeline system's valve spacing is deemed insufficient to protect California's uniquely situated population centers and environmental resources, the State Fire Marshal shall adopt regulations to require the addition of valves on existing pipelines. If the study indicates that guidelines for valve spacing do not, in the State Fire Marshal's opinion, adequately protect these population centers and environmental resources, the State Fire Marshal may adopt regulations to require new valves on new, existing, or replacement pipelines as necessary to protect the public interest.

SEC. 7. Section 51018.6 of the Government Code is amended to read:

51018.6. (a) The State Fire Marshal shall adopt regulations for conducting enforcement proceedings pursuant to this section. These regulations shall include provisions for the service and the content of the notice of probable violation, response options, conduct of hearings, issuing of the final order, amended final order, and petitions for reconsideration and compromise of penalties, and shall be consistent with the procedures specified in Sections 190.207 to 190.215, inclusive, and Section 190.227 of Title 49 of the Code of Federal Regulations.

(b) If the State Fire Marshal determines, pursuant to the regulations adopted pursuant to subdivision (a), that a person has

violated this chapter or any regulation adopted pursuant thereto, that person is subject to a civil penalty of not more than ten thousand dollars ($10,000) for each day that violation persists, except that the maximum civil penalty shall not exceed five hundred thousand dollars ($500,000) for any related series of violations.

(c) The amount of the penalty shall be assessed by the State Fire Marshal pursuant to the regulations adopted pursuant to subdivision (a). In determining the amount of the penalty, the State Fire Marshal shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempts to achieve compliance, ability to pay the penalty, and any other matters as justice may require.

(d) A civil penalty assessed under subdivision (b) may be recovered in an action brought by the Attorney General on behalf of the state. Prior to referring the penalty action to the Attorney General, the State Fire Marshal may accept an offer to compromise the amount of the assessed penalty pursuant to the regulations adopted pursuant to subdivision (a).

(e) The State Fire Marshal shall deposit all civil penalties assessed pursuant to this section in the Local Training Account in the California Hazardous Liquid Pipeline Safety Fund. The money in the Local Training Account is available, upon appropriation by the Legislature, to the State Fire Marshal, who shall use the money for providing hazardous liquid fire suppression training to local fire departments.

SEC. 8. Section 51018.7 of the Government Code is amended to read:

51018.7 (a) Any person who willfully and knowingly violates any provision of this chapter or a regulation issued pursuant thereto shall, upon conviction, be subject, for each offense, to a fine of not more than twenty-five thousand dollars ($25,000), imprisonment for a term not to exceed five years, or both.

(b) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign or right-of-way marker required by federal or state law or regulation shall, upon conviction, be subject, for each offense, to a fine of not more than five thousand dollars ($5,000), imprisonment for a term not to exceed one year, or both.

SEC. 9. The sum of three hundred thousand dollars ($300,000) is hereby appropriated from the Interstate Pipeline Operations Account and the Intrastate Pipeline Operations Account in the California Hazardous Liquid Pipeline Safety Fund, to the State Fire Marshal for purposes of the studies required by subdivision (f) of Section 51013.5 and by Section 51016. This appropriation shall be paid for from fees assessed and collected by the State Fire Marshal from pipeline operators, and deposited in the Intrastate Pipeline Operations Account and the Interstate Pipeline Operations Account

in the California Hazardous Liquid Pipeline Safety Fund pursuant to Sections 51019 and 51019.05.

The portion of the appropriation to be made from each account shall be equal to the ratio of the total fees deposited in that account to the total fees deposited in both accounts for the purpose of funding the studies required by 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 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1278

An act to amend Sections 18013.2 and 18020 of the Health and Safety Code, relating to housing.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 18013.2 of the Health and Safety Code is amended to read:

18013.2. "Third-party entity" or "third party," as used in this part, means an entity which is all of the following:

(a) In the business of inspecting equipment, systems, and assemblies and monitoring quality assurance programs, or analyzing plans, designs, specifications, and engineering calculations supporting design concepts.

(b) Not under the control or jurisdiction of any manufacturer or supplier for any affected industry except by contract as required and approved by the department.

(c) Making available specific information as required by the department.

(d) Approved by the department.

SEC. 2. Section 18020 of the Health and Safety Code is amended to read:

18020. (a) Except as provided by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sec. 5401, et seq.), as it applies to the manufacture of new manufactured housing, the department shall enforce this part and the rules and regulations adopted thereunder.

(b) The department may, at the department's sole option, enforce Chapter 4 (commencing with Section 18025) and the rules and regulations adopted thereunder through department-approved third-party entities. The department shall adopt regulations for the approval of third-party entities, including, but not limited to, all of the following criteria:

(1) Freedom from any conflict of interest.

(2) Qualifications of personnel.

(3) Frequency of inspections or monitorings of manufacturer quality control.

(4) Involvement in collusive or fraudulent actions related to the performance of activities required by Section 18013.2.

(5) Any other conditions of operations the department may reasonably require.

(c) The department may require rotation of third-party entities performing inspection services for any manufacturing facility within the state to prevent either the third-party entity from performing within the same facility for more than 365 calendar days or from performing inspections for any facility when the third-party entity performed inspection services within the previous 365 calendar days.

(d) The department shall monitor the performance of third-party entities approved pursuant to subdivision (b) and shall require periodic reports in written form containing information the department may reasonably require to determine compliance with the conditions of the department's approval.

(1) When the department receives information about an alleged inadequacy in the performance of a third-party entity, including any involvement in collusive or fraudulent actions related to the performance of activities required by Section 18013.2, it shall consider the information in its monitoring efforts and make a determination about the validity of the alleged inadequacy in a timely manner.

(2) Where the department determines, either through its monitoring efforts or through information provided by any other person, that an approved third-party entity has failed to perform to the conditions of approval, the department may withdraw approval by forwarding written notice to the approved third-party entity by registered mail to its address of record, briefly summarizing the cause for the department's decision.

(3) A third-party entity upon having its approval withdrawn by the department, may request a hearing before the director of the department. The request for hearing shall be in writing and either delivered or postmarked prior to midnight on the 10th calendar day from the date of the department's notice.

(4) The department, upon timely receipt of a written request for hearing, shall, within 30 calendar days, schedule a hearing before the director or his or her agent. All hearings pursuant to this subdivision shall be held in the department's Sacramento offices and the decision of the director shall be final.

(5) A third-party entity whose approval has been withdrawn by the department shall not be permitted to reapply for the department's approval pursuant to subdivision (b) for a period of one year from the date the approval was withdrawn by the department.

(6) A third-party entity whose approval has been withdrawn more than once by the department shall not be permitted to reapply for department approval pursuant to subdivision (b) for a period of not less than one year from the date the department's approval was last withdrawn.

(7) No third-party entity shall perform the activities required by Section 18013.2 unless it has the approval of the department.

(e) (1) Upon finding a violation of subdivision (b) on the part of a third-party entity, the director shall issue citations and levy administrative fines. Each citation and fine assessment shall be in writing and describe the particulars for the citation. The citation and fine assessment shall be issued no later than six months after discovery of the violation.

(2) The fine for the first violation shall be at least five hundred dollars ($500) and shall not exceed one thousand dollars ($1,000), the fine for the second violation shall be at least two thousand dollars ($2,000) and not exceed four thousand dollars ($4,000), and the fine for the third violation shall be at least five thousand dollars ($5,000), and shall not exceed ten thousand dollars ($10,000). The fines shall be assessed for each day the violation occurs. If a third-party entity has been cited more than three times during a 365 day period, the approval to conduct inspections on behalf of the department shall be suspended for a minimum of one year.

(3) The third-party entity may request an administrative hearing on the citation or fine. If the party fails to request a hearing within 30 days, and does not pay the fine, the approval to perform inspections shall be automatically revoked, until such time as the department finds that the circumstances which led to the citation have been corrected and the fines have been paid.

(4) Upon review of the findings from the administrative hearing, the director may modify, rescind, or uphold the citation and fine assessment. The decision of the director shall be served by regular mail.

(5) The fines shall be paid into the Housing and Community Development Fund, which is hereby created in the State Treasury, and shall be used, when appropriated by the Legislature, to offset the department's costs to administer this part.

(f) The remedies provided in this part to any aggrieved party are not exclusive and shall not preclude the applicability of any other provision of law.

CHAPTER 1279

An act to add Section 31315 to the Public Resources Code, relating to coastal resources, and making an appropriation therefor.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Major fishing harbors throughout California are part of the public trust and provide offloading facilities and onshore support facilities for both the commercial and recreational fishermen.

(b) The fishing industry has been an essential part of California's economy, providing an extensive base of employment and revenue for local governments. The commercial fishing industry provides viable trade opportunities for California as it expands export opportunities and tries to maintain a balance of trade.

(c) The infrastructure in commercial fishing harbors has deteriorated causing substandard and inefficient conditions that impede the industry's ability to compete with other fishing nations.

(d) This deterioration was documented in a survey of Commercial Fishing Facilities conducted by the State Coastal Conservancy in 1984 at the Legislature's request. The report recommended the injection of state resources to protect the livelihood of commercial fishing and coastal dependent industries that depend on safe and efficient harbor infrastructure.

(e) The state needs to act to make these infrastructure investments because it needs to prepare for the implementation of imminent federal sanitation inspection standards. Without these improvements, fishing harbors would not be able to meet new sanitation standards which may require mandatory inspections of seafood products similar to those in the poultry and meat industry.

(f) The consumption of seafood is rapidly increasing and the state has an interest in assuring the availability of seafood products that are safe and healthy for consumers.

(g) Infrastructure improvements in discharge methods will promote the state's interest in improving water quality in fishing harbors to protect marine ecology, and the supply and quality of seafood.

SEC. 2. Section 31315 is added to the Public Resources Code, to read:

31315. The conservancy, under its mandate for urban waterfront restoration, shall administer the distribution of state funds, when appropriated to the conservancy, for the improvement of the infrastructure of fishing harbors on public trust lands.

SEC. 3. (a) If Assembly Bill 1580 of the 1989–90 Regular Session of the Legislature is enacted on or before January 1, 1990, the

unencumbered balance of the appropriations provided in the following citations are reappropriated to the State Coastal Conservancy for the purpose of acquiring the Point Cabrillo Project:

(1) Subparagraph (Y) of paragraph (3) of subdivision (c) of Section 4 of Assembly Bill 1580 of the 1989–90 Regular Session.

(2) Subparagraph (FF) of paragraph (3) of subdivision (c) of Section 4 of Assembly Bill 1580 of the 1989–90 Regular Session.

(b) If Assembly Bill 1580 of the 1989–90 Regular Session of the Legislature is not enacted on or before January 1, 1990, the sum of two million dollars ($2,000,000) is hereby appropriated from the Public Resources Account of the Cigarette and Tobacco Products Surtax Fund to the State Coastal Conservancy for the purpose of acquiring the Point Cabrillo Project.

SEC. 4. The State Coastal Conservancy shall, from any non-general fund money available to it, allocate two million five hundred thousand dollars ($2,500,000) as follows:

(a) One million five hundred thousand dollars ($1,500,000) for the Otay River Valley Project,

(b) One million dollars ($1,000,000) for the San Francisco Bay Trail Project.

The conservancy may only allocate those funds which may constitutionally be used for those projects.

CHAPTER 1280

An act to amend Section 4904 of, and to add Section 3865 to, the Labor Code, and to amend Sections 2629 and 3253 of, and to repeal and add Section 2629.1 of, the Unemployment Insurance Code, relating to disability insurance, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 3865 is added to the Labor Code, to read.

3865. Any judgment or settlement of an action as provided for in this chapter is, upon notice to the court, subject to the same lien claims of the Employment Development Department as are provided for in Chapter 1 (commencing with Section 4900) of Part 3, and shall be allowed by the court as it determines necessary to avoid a duplication of payment as compensation to the employee for lost earnings.

SEC. 2. Section 4904 of the Labor Code is amended to read:

4904. If notice is given in writing to the insurer, or to the employer if uninsured, setting forth the nature and extent of any claim that is allowable as a lien, the claim is a lien against any amount

thereafter payable as compensation, subject to the determination of the amount and approval of the lien by the appeals board. In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for temporary disability indemnity is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1 of the Unemployment Insurance Code. In determining the amount of lien to be allowed for unemployment compensation benefits and extended duration benefits under subdivision (g) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days for which an award of compensation for temporary total disability is made. In the case of agreements for the compromise and release of a disputed claim for compensation, the applicant and defendant may propose to the appeals board, as part of the compromise and release agreement, an amount out of the settlement to be paid to any lien claimant claiming under subdivision (f) or (g) of Section 4903. If the lien claimant objects to the amount proposed for payment of its lien under a compromise and release settlement or stipulation, the appeals board shall determine the extent of the lien claimant's entitlement to reimbursement on its lien and make and file findings on all facts involved in the controversy over this issue in accordance with Section 5313. The appeals board may approve a compromise and release agreement or stipulation which proposes the disallowance of a lien, in whole or in part, only where there is proof of service upon the lien claimant by the defendant, not less than 15 days prior to the appeals board action, of all medical and rehabilitation documents and a copy of the proposed compromise and release agreement or stipulation. The determination of the appeals board, subject to petition for reconsideration and to the right of judicial review, as to the amount of lien allowed under subdivision (f) or (g) of Section 4903, whether in connection with an award of compensation or the approval of a compromise and release agreement, shall be binding on the lien claimant, the applicant, and the defendant, insofar as the right to benefits paid under the Unemployment Insurance Code for which the lien was claimed. The appeals board may order the amount of any lien claim, as determined and allowed by it, to be paid directly to the person entitled, either in a lump sum or in installments.

Where unemployment compensation disability benefits have been paid pursuant to the Unemployment Insurance Code while reconsideration of an order, decision, or award is pending, or has been granted, the appeals board shall determine and allow a final amount on the lien as of the date the board is ready to issue its decision denying a petition for reconsideration or affirming, rescinding, altering or amending the original findings, order,

decision, or award.

The appeals board shall not be prohibited from approving a compromise and release agreement on all other issues and deferring to subsequent proceedings the determination of a lien claimant's entitlement to reimbursement if the defendant in any of these proceedings agrees to pay the amount subsequently determined to be due under the lien claim.

SEC. 3. Section 2629 of the Unemployment Insurance Code is amended to read:

2629. (a) Except as provided in this section, an individual is not eligible for disability benefits under this part for any day of unemployment and disability for which he or she has received, or is entitled to receive, "other benefits" in the form of cash payments.

(b) "Other benefits," as used in this section and Section 2629.1, means:

(1) Temporary disability indemnity under a workers' compensation law of this state or of any other state or of the federal government.

(2) Temporary disability benefits under any employer's liability law of this state or of any other state or of the federal government.

(c) If the "other benefits" are less than the amount an individual would otherwise receive as disability benefits under this part, he or she shall be entitled to receive, for that day, if otherwise eligible, disability benefits under this part reduced by the amount of the "other benefits."

SEC. 4. Section 2629.1 of the Unemployment Insurance Code is repealed.

SEC. 5. Section 2629.1 is added to the Unemployment Insurance Code, to read:

2629.1. (a) Nothing in Section 2629 shall be construed to authorize the delay of payment of unemployment compensation disability benefits except where the claimant is currently in receipt of other benefits or where the department has received notice that the claimant's employer or insurer has agreed to commence the payment of other benefits.

(b) Notwithstanding Section 2701.5, payments shall commence within 14 days after notice to the employer or insurer under this section unless the employer or insurer has either paid or has agreed to commence the payment of other benefits.

(c) Upon the filing of a claim for unemployment compensation disability benefits, the department shall make an initial determination as to the claimant's entitlement to other benefits for purposes of Section 2629.

(1) The department shall notify the claimant and the claimant's employer if it determines that the claimant is entitled to other benefits.

(2) The notice to the claimant shall inform the claimant that disability benefits will be paid pending receipt of other benefits if the employer fails to agree to pay these other benefits within 14 days of

notification of industrial injury and shall advise the claimant of the provisions of Section 2629.

(3) The department shall also include with the claimant's notice a pamphlet to be provided by the Department of Industrial Relations which meets the criteria specified in subdivision (b) of Section 139.6 of the Labor Code.

(4) The notice to the employer shall constitute a claim for compensation and knowledge of an injury for purposes of Section 5402 of the Labor Code, and shall inform the employer of its potential liability for interest and penalties under this section.

(d) If the employer or the insurance carrier disputes liability for the payment of other benefits, or the extent thereof, the department's right to reimbursement shall be subject to the jurisdiction of the Workers' Compensation Appeals Board in accordance with Part 4 (commencing with Section 5300) of Division 4 of the Labor Code.

(e) An employer or insurance carrier who subsequently assumes liability or is determined to be liable for reimbursement to the department for unemployment compensation disability benefits which the department has paid in lieu of other benefits shall be assessed for this liability by the department. In addition, the employer shall pay the department interest on the disability benefits at the annual rate provided in Section 19269 of the Revenue and Taxation Code The employer shall also pay a penalty of 10 percent of the amount reimbursed to the department if the Workers' Compensation Appeals Board finds that the failure of the employer to pay other benefits upon notice by the department under this section was unreasonable and a penalty has not been awarded for the delay under Section 5814 of the Labor Code. All funds received by the department pursuant to this section shall be deposited in the Disability Fund.

(f) The employer shall reimburse the department in accordance with subdivision (e) within 60 days of either voluntarily accepting liability for other benefits or after a final award, order, or decision of the Workers' Compensation Appeals Board.

SEC. 6. Section 3253 of the Unemployment Insurance Code is amended to read:

3253. Except as provided in this part, an employee covered by an approved voluntary plan at the commencement of a disability benefit period, as defined in Section 2608, shall not be entitled to benefits from the Disability Fund. Benefits payable to such an employee shall be the liability of the approved voluntary plan under which the employee was covered at the commencement of the disability benefit period, regardless of any subsequent disabling condition which may occur during that disability benefit period. The Director of Employment Development shall prescribe authorized regulations to allow benefits to individuals simultaneously covered by one or more approved voluntary plans and the Disability Fund.

CHAPTER 1281

An act to amend Section 203.5 of the Labor Code, relating to wages.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. Section 203.5 of the Labor Code is amended to read:

203.5. (a) If a bonding company issuing a bond which secures the payment of wages for labor or the surety on a bond willfully fails to pay, without abatement or reduction, any verified claim made for wages found to be due and payable, the claim for wages shall continue as a penalty against the bonding company or surety from the date on which demand for payment was made at the same rate until paid as the wages upon which the claim is based, except that the claim shall not continue as a penalty for more than 30 days.

(b) This section shall not apply to contractor's bonds required pursuant to Section 7071.6 of the Business and Professions Code.

CHAPTER 1282

An act to add Article 12 (commencing with Section 44666) to Chapter 3 of Part 25 of, and to add Sections 52049.1 and 54760.1 to, the Education Code, relating to education.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Article 12 (commencing with Section 44666) is added to Chapter 3 of Part 25 of the Education Code, to read:

Article 12. School-Based Management and Advanced Career Opportunities for Classroom Teachers Programs

44666. (a) The Legislature finds that a primary goal of every public school should be the creation of effective and productive learning environments for pupils. Increasing the educational effectiveness and productivity of public schools may require new ways of organizing instructional and adminstrative staff which increase the collective investment of all schoolsite educators in the success of their school. The Legislature also finds that innovation and change are frequently discouraged by undue administrative and organizational rigidity. The Legislature intends that the school

district's role in working with schoolsites be characterized by setting clear goals, providing sites the flexibility to achieve those goals, offering high quality technical assistance and support, and holding sites accountable for performance. The Legislature supports shifting from a rule-based system to a performance-based system of accountability. Those educators closest to pupils should be free, within limits, to create learning environments appropriate to their circumstances. The Legislature declares its intent not to diminish the leadership roles of school districts and site-level administrators. However, the Legislature does intend to encourage schools to foster more professional collaboration where teachers and principals, as an educational team, are responsible for creating the conditions that make more effective teaching and learning possible, and where schoolsite educators as a group have responsibility for the functioning and performance of their school.

It is the further intent of the Legislature to encourage and foster a shift in public school administration from a system that rigidly controls and directs what goes on at the next lowest level, to a system that guides and facilitates professionals in their quest for more productive learning opportunities for their pupils.

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

(1) Hierarchical decisionmaking has tended to reduce the effectiveness and productivity of teachers in educating pupils. A more collaborative decisionmaking process may result in more effective teaching and pupil learning.

(2) A true profession should offer individuals the opportunity for growth in their careers and in their professional lives.

(3) Professional growth brings with it additional responsibilities and accountability, and taking greater responsibility allows the professional to achieve enhanced status and higher salary, and to make a contribution to the profession.

(4) The current staffing structures and compensation structures in California school districts that emphasize seniority in setting teacher salaries and uniformity in teachers' roles do not adequately reward teaching excellence, exceptional achievement, or the assumption of additional educational responsibilities by teachers. Neither do they provide an incentive for teachers to continue to pursue excellence.

(5) The establishment of advanced career opportunities for teachers, in conjunction with greater teacher involvement in schoolsite management, should increase the variety and responsibility of a teacher's work. It should also provide: (A) a mechanism for restructuring salary schedules to recognize experience, additional work and responsibility; and (B) the opportunity for performance-based contracts with teachers or groups of teachers.

(6) Advanced career opportunities for teachers should also provide an incentive for teachers to remain in teaching, upgrade their skills, and improve the instructional program.

44667. (a) It is the intent of the Legislature to encourage school districts to plan and implement alternative models of school-based management projects, or advanced career opportunities for classroom teachers projects, or a combination of both, for one or more schools in the district. Further, it is the intent of the Legislature that school district governing boards and administrators work with classroom teachers and teacher bargaining units to develop and strengthen procedures that increase teachers' decisionmaking authority in responsibilities that affect their ability to teach. These procedures may include, but need not be limited to, the following:

(1) Selection of new teachers and administrators.

(2) Evaluation of teacher and administrator performance.

(3) Selection of curricular areas for improvement.

(4) Tailoring and coordination of curriculum and instruction across grade levels and within departments at the schoolsite level.

(5) Establishment of pupil discipline policies.

(6) Design and conduct of staff development programs and policies.

(7) Assignment of pupils and scheduling of classes

(8) Schoolwide problem solving and program development.

(9) Organization of the school for effective instruction.

(10) Development of procedures designed to institutionalize teacher involvement in decisionmaking.

(11) Determining the roles and functions of teachers, administrators, and classified employees at the school site.

(12) Development of alternative methods of teacher compensation that reward teaching excellence, exceptional achievement or the assumption of additional educational responsibilities.

(13) Establishment of policies to decentralize district decisionmaking by providing schoolsite administrators and teachers with greater budget authority including the allocation of fiscal, personnel, and other resources at the schoolsite.

(b) Participation of school discticts in the programs established pursuant to this article shall be on a voluntary basis. A school district shall be eligible to participate only upon the approval of participation by both the governing board of the district and the exclusive representative of certificated employees of the district.

44667.2. It is the intent of the Legislature that each school district's school-based management proposal shall include the following:

(a) A plan for involving parents in the planning, implementation, and evaluation of school restructuring efforts.

(b) A plan for staff development that shall be made available to participating school personnel in order to assist in restructuring elements specified in the district proposal.

(c) A plan for regularly assessing the progress of participating schools in meeting the goals identified in their funding proposal. Assessment plans shall include provisions for the collection of

information on various school-level indicators including pupil performance, detentions, pupil and teacher absenteeism, and staff turnover. Districts are encouraged, as well, to establish a process of onsite quality reviews with the objective of evaluating the quality of instruction, leadership, staff development, and the planning and decisionmaking processes at participating schools.

44668. (a) "Advanced career opportunities for classroom teachers" means a compensation system developed jointly by the governing board of a school district and the exclusive representative of certificated employees for one or more of the schools in the district that may include the following components:

(1) Extended contract days.

(2) Additional pay for additional duties or responsibilities.

(3) Differentiated staffing.

(4) Additional pay for meeting contracted performance goals.

(b) Each Advanced Career Opportunity Program shall include the following components:

(1) Fair selection procedures for job enlargement activities.

(2) An evaluation procedure developed jointly by the governing board of the district and the exclusive representative of certificated employees that provides for periodic, fair, objective, and consistent evaluation of educator performance for purposes of placement and career advancement.

(3) A plan for the periodic review of the district's Advanced Career Opportunity Program.

44669. Notwithstanding any other provision of law, for the purposes of implementing a program established pursuant to this article, the State Board of Education may waive any part, article, or section of this code or any regulation adopted by the State Board of Education that implements this code upon request by a governing board of a school district on a districtwide basis or on behalf of its schools or programs, if the governing board does both of the following:

(a) Provide written documentation that the exclusive representative of certificated employees concurs with the request. Failure of the exclusive representative of certificated employees to concur in the waiver request shall constitute cause for its denial.

(b) Demonstrate that the waiver request is necessary to implement the proposed pilot project.

SEC. 2. Section 52049.1 is added to the Education Code, to read:

52049.1. School improvement grants apportioned to school districts under this article for planning or implementation may be expended for the purposes of funding the School-Based Management and Advanced Career Opportunities for Classroom Teachers Programs authorized under Article 12 (commencing with Section 44666) of Chapter 3 of Part 25, provided that the plan developed pursuant to Section 52015 incorporates elements of these programs.

SEC. 3. Section 54760.1 is added to the Education Code, to read:

54760.1. Supplemental grants apportioned to school districts

under this article may be expended for the purposes of funding the School-Based Management and Advanced Career Opportunities for Classroom Teachers Pilot Programs authorized by Article 12 (commencing with Section 44666) of Chapter 3 of Part 25.

CHAPTER 1283

An act to amend Section 14031.10 of the Government Code, to add Section 21080.05 to the Public Resources Code, to add Section 99234.7 to the Public Utilities Code, and to repeal Section 10 of Chapter 1434 of the Statutes of 1988, relating to transportation.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1 Section 14031.10 of the Government Code is amended to read:

14031.10. For purposes of Sections 14031.8 and 14031.9:

(a) "Avoidable cost" means all costs associated with a particular service which would not be incurred if the service were not provided.

(b) "Operating costs" means all costs, exclusive of capital costs, amortization and depreciation costs, costs of demonstration projects of no more than two years duration designed to increase efficiency of operations and improve farebox ratios, and lease-with-an-option-to-purchase costs, associated with a particular service which would be incurred only if the service were provided.

(c) "Fare revenues" means the total revenues collected from the operation of a particular service and includes that portion of the local operating support for any existing commuter services funded under Section 14031.6 which exceeds the level of local operating support as required by the terms of any agreement in existence on January 1, 1986, between the department and local agencies.

SEC. 2. Section 21080.05 is added to the Public Resources Code, to read:

21080.05. This division does not apply to a project by a public agency to lease or purchase the rail right-of-way used for the San Francisco Peninsula commute service between San Francisco and San Jose, together with all branch and spur lines, including the Dumbarton and Vasona lines.

SEC. 3. Section 99234.7 is added to the Public Utilities Code, to read:

99234.7. (a) The Department of Transportation may negotiate and contract with the appropriate railroad corporation to provide passenger rail service between the City and County of San Francisco and the Counties of San Mateo and Santa Clara. In the process of

negotiating the contract, the department shall take into consideration the funding available and the level of service as it has been recommended by the Metropolitan Transportation Commission. Notwithstanding Section 14035 of the Government Code, the contract shall not extend beyond June 30, 1993. The California Transportation Commission shall allocate no funds pursuant to Section 14031.6 of the Government Code for this rail passenger service after the 1992–93 fiscal year. If the department enters into a contract, it shall, on or before July 1, 1992, assign the contract to the Peninsula Corridor Study Joint Powers Board or to another local or regional agency designated by the board which is authorized to operate or contract for the operation of rail passenger service, if the board or designated agency determines that the rail passenger service shall be continued. The department shall assign its operating subsidies for the 1992–93 fiscal year for that service to the board or that designated agency. Within the area of jurisdiction of the board, the board or that designated agency may acquire from the department all property owned or leased by the department for that rail passenger service, including, but not limited to, stations, facilities, equipment, and rights-of-way, and this transfer shall be consistent with the process defined in Section 160006. The California Transportation Commission shall not allocate state funds to purchase the San Francisco Peninsula commuter rail service right-of-way unless a local agency assumes operation and control of the commuter rail service on or before June 30, 1993. This section does not prohibit the commission from making a multiyear funding commitment to purchase the right-of-way subject to that assumption of operation and control occurring on or before that date.

(b) Notwithstanding subdivision (a), a transit district or county may negotiate and contract with the appropriate railroad corporation to provide passenger rail service which is to be primarily operated within its jurisdiction. Adjacent transit districts or counties may jointly negotiate and contract with the appropriate railroad corporation to provide passenger rail service which is to be primarily operated within their jurisdictions.

SEC. 4. Section 10 of Chapter 1434 of the Statutes of 1988 is repealed.

CHAPTER 1284

An act to amend Section 12022 of the Penal Code, relating to crime, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 12022 of the Penal Code is amended to read:

12022. (a) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless such arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not such person is personally armed with a firearm.

(b) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted.

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person not personally armed with a firearm who, knowing

that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (c), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentencing.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 2. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless such arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not such person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276, or a machinegun, as defined in Section 12200, the additional term described in this subdivision shall be three years whether or not the arming is an element of the offense of which he or she was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with an assault weapon or machinegun whether or not the person is personally armed with an assault weapon or machinegun.

(b) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted.

When a person is found to have personally used a deadly or

dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (c), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentencing.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12022 of the Penal Code proposed by both this bill and AB 357. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 12022 of the Penal Code, and (3) this bill is enacted after AB 357, in which case Section 12022 of the Penal Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of AB 357, at which time Section 2 of this bill shall 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 to assure that criminal defendants are charged with

appropriate sanctions, it is necessary that this act take immediate effect.

CHAPTER 1285

An act to amend Sections 11100 and 11450 of, and to repeal and add Sections 11056 and 11266 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 11056 of the Welfare and Institutions Code is repealed.

SEC. 2. Section 11056 is added to the Welfare and Institutions Code, to read:

11056. (a) If the applicant is determined to be eligible, aid shall be granted from the date of application if the applicant meets all eligibility conditions on that date, or from the date on which the applicant meets all eligibility conditions, whichever is later. In any event, the beginning date of aid shall comply with federal requirements for aid programs covered under this section whether or not federal financial participation in the aid payment is available.

(b) This section shall include, but not be limited to, payments made under the Aid to Families with Dependent Children-Foster Care program.

SEC. 3. Section 11100 of the Welfare and Institutions Code is amended to read·

11100. For the purposes of the provisions of this code relating to public assistance, the continued absence of a recipient of public assistance from this state for a period of 60 days or longer shall be prima facie evidence of the intent of the recipient to have changed his or her residence to a place outside this state. The county granting the public assistance shall make inquiry from all recipients who have been continuously absent from this state for a period of 30 days, with the next assistance payment, so as to determine their intent to remain residents of California or to become residents of another state, and shall redetermine the residence of those persons. In any case where the inquiry made under this section establishes that the recipient is no longer a resident of this state, his or her aid shall be terminated immediately.

If a recipient is prevented by illness or other good cause from returning to this state at the end of 60 days, and has not by act or intent established residence elsewhere, residence shall not be deemed to have been lost in this state.

SEC. 4. Section 11266 of the Welfare and Institutions Code is

repealed.

SEC. 5. Section 11266 is added to the Welfare and Institutions Code, to read:

11266. (a) At the time of application, the county shall determine whether the applicant needs immediate assistance because the applicant does not have sufficient resources to meet his or her emergency needs, and shall determine whether the applicant is apparently eligible for aid under this chapter.

(1) The county shall determine that the applicant needs immediate assistance if the family's total available liquid resources, both nonexempt and exempt, are less than one hundred dollars ($100) and there is an emergency situation, whether foreseeable or not. Examples of emergency situations include, but are not limited to, lack of housing, lack of food, notice of termination or loss of utility service, lack of essential clothing (including diapers), and inability to meet essential transportation needs.

(2) Apparent eligibility exists when evidence presented by the applicant or which is otherwise available to the county welfare department and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. An alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, shall not be considered to be apparently eligible under this subdivision.

(b) If an applicant needs immediate assistance, and is apparently eligible for aid as defined in subdivision (a), the county shall pay the applicant two hundred dollars ($200) or the maximum amount for which that applicant is eligible, whichever is less. The advance payment shall be made by the end of the first working day following the request for that aid. The county shall verify the applicant's eligibility for aid within 15 working days of the date that immediate need is requested, and advance payments made under this section shall be offset against the first grant payment made to the recipient.

(c) An applicant's receipt of a notice of eviction, including a three-day notice to pay or quit, shall constitute an emergency situation under subdivision (a), irrespective of the one hundred dollar ($100) resource test, if the applicant has insufficient income or resources to pay the rent owing. In those cases, the county shall give the applicant the option of receiving an immediate advance on the grant as described in subdivision (b), or an expedited determination of eligibility for aid. Before an applicant decides between these two options, the county shall fully apprise the applicant, in writing, of all information necessary to establish eligibility for aid. If an applicant requests expedited determination of eligibility for aid, the county shall complete the determination of eligibility for aid under this chapter, and, if the applicant is determined to be eligible, issue payment of the full prorated grant no more than three working days from the request for immediate need. If the eligibility determination

is not made within this three-day period, the county shall immediately pay the applicant two hundred dollars ($200) or the maximum amount for which the applicant is eligible, whichever is less, as specified in subdivisions (a) and (b). The county shall verify the applicant's eligibility within 15 working days of the date of the request for immediate assistance, and advance payments made under this subdivision shall be offset against the first grant payment made to the recipient.

(d) (1) The county may deny an immediate advance payment if the applicant's only immediate need is homelessness and this need will be met by issuance of nonrecurring special needs payment in accordance with subdivision (f) of Section 11450, or if the applicant's only immediate need is lack of food and this need will be met by issuance of food stamps within one working day of the request therefor. With regard to all other immediate needs, an advance payment may be denied and the applicant referred to another public or private program or resource, if all of the following conditions are met:

(A) Not more than one referral is made and the referral, when made, is to meet no more than one need.

(B) The county has verified in advance that the specific need can be satisfactorily addressed by the other program or resource immediately.

(C) Travel to the other program or resource will not impose a hardship on the applicant.

(2) If, for any reason, the other program or resource does not satisfactorily meet the applicant's need, the applicant shall be immediately issued an advance payment, as specified in subdivision (b).

(3) Except in the case of an applicant whose only need is lack of food and the need is met with the issuance of food stamps within one working day of the request, where an applicant's immediate need is met by an alternative program or resource authorized in this subdivision, the county shall verify the applicant's eligibility for aid within 15 working days of the date of request.

(e) A denial of an immediate need application shall not constitute a denial of the application for aid unless it is based upon the failure to meet relevant eligibility requirements.

SEC. 6. Section 11450 of the Welfare and Institutions Code is amended to read:

11450. (a) For each needy family which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter, there shall be paid, notwithstanding minimum basic standards of adequate care established by the department under Section 11452, an amount of aid each month which when added to the family's income, exclusive of any amounts considered exempt as income or (f) paid pursuant to

subdivision (e) or Section 11453.1, is equal to the sums specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453:

Number of eligible needy persons in the same home	Maximum aid
1	$ 258
2	424
3	526
4	625
5	713
6	802
7	880
8	959
9	1,036
10 or more	1,114

If, when, and during such times as the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no such increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother in the amount which would otherwise be paid to one person as specified in subdivision (a) if the mother, and child if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision.

(c) The amount of seventy dollars ($70) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under the provisions of this chapter, there shall be paid, exclusive of any amount considered

exempt as income, an amount of aid each month which when added to the child's income is equal to the rate specified in Section 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453 1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping service, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant or which is otherwise available to the county welfare department and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(A) A nonrecurring special need of thirty dollars ($30) a day shall

be available for up to three weeks to families for the costs of temporary shelter. County welfare departments may increase the daily amount available for temporary shelter to large families as necessary to secure the additional bed space needed by the family. This special need shall be granted or denied immediately upon the family's application for homeless assistance. The three-week limit shall be extended one week based upon good cause or other circumstances defined by the department. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing within the three week limit.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence.

The last month's rent portion of the payment (1) shall not exceed 80 percent of the family's maximum aid payment without special needs for a family of that size and (2) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's maximum aid payment without special needs for a family of that size, in accordance with the maximum aid schedule specified in subdivision (a).

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (2) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) Eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to paragraph (2) is limited to once every 12 months.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in their share to any refunds resulting from payment of the permanent

housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(g) The department shall establish rules and regulations assuring the uniform application statewide of the provisions of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a) of this section.

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

SEC. 7. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Director of Social Services shall adopt emergency regulations to implement this act. The emergency regulations shall remain in effect for no more than 120 days unless the department complies with all provisions of Chapter 3.5 (commencing with Section 11340) as required by subdivision (e) of Section 11346.1 of the Government Code.

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

SEC. 9. This act shall become operative 30 days following approval by the Superior Court for the County of Sacramento of the consent decree for Welfare Recipients League, Inc., et al v. McMahon, Case No. 268972, but in no event earlier than July 1, 1990.

CHAPTER 1286

An act to add Section 782 to the Financial Code, relating to financial institutions.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 782 is added to the Financial Code, to read:

782. Notwithstanding Section 1335, a bank may invest in shares of an investment company (1) registered with the Securities and Exchange Commission pursuant to the federal Investment Company Act of 1940, as amended (15 U.S.C. Sec. 80a-1 et seq.) and for which the shares are registered under the federal Securities Act of 1933, as amended (15 U.S.C. Sec. 77a et seq.), and (2) the portfolio of which consists solely of the following:

(a) Debt obligations in which a bank is permitted to invest without limitation pursuant to subdivision (a), (b), (c), or (d) of Section 1336 and repurchase agreements fully collateralized by those obligations.

(b) Loans of federal funds and similar loans of unsecured day(s) funds, maturing in six months or less to institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation [Federal Funds]. Loans under this subdivision are limited to transactions described in subsection (a) or (b) of Section 32.102 of Title 12 of the Code of Federal Regulations involving investment companies in which the entire beneficial interest is held exclusively by depository institutions, as permitted by Section 204.123 of Title 12 of the Code of Federal Regulations.

The superintendent may, by regulation, prescribe further conditions respecting investment by banks under this section as may be necessary for the safety or soundness of banks or as may otherwise be in the public interest.

CHAPTER 1287

An act to add and repeal Division 26 (commencing with Section 35100) of the Public Resources Code, relating to the Santa Clara County Open-Space Authority.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Division 26 (commencing with Section 35100) is

added to the Public Resources Code, to read:

DIVISION 26. SANTA CLARA COUNTY OPEN-SPACE AUTHORITY

CHAPTER 1. GENERAL PROVISIONS

35100. This division shall be known and may be cited as the Santa Clara County Open-Space Authority Act.

35101. The Legislature hereby finds and declares all of the following:

(a) In Santa Clara County, open-space preservation and creation of a greenbelt are immediate high priorities needed to counter the continuing and serious conversion of these lands to urban uses, to preserve the quality of life in the county, and to assist in the retention of agricultural activities.

(b) In order to deal in an expeditious manner with the current serious loss of these properties, the county needs to develop and implement a local funding program involving properties occupied for urban purposes which give rise to the need for open-space preservation that goes significantly beyond current existing funding which is not adequate to resolve these losses.

(c) It is in the public interest to allow the voters of Santa Clara County to create the Santa Clara County Open-Space Authority so that local open-space preservation and greenbelting decisions can be implemented in a timely manner to provide for the acquisition and maintenance of these properties.

35102. "Agricultural activity" has the same meaning as "agricultural activity, operation, or facility, or appurtenances thereof" as defined in subdivision (e) of Section 3482.5 of the Civil Code.

35103. "Authority" means the Santa Clara County Open-Space Authority created pursuant to this division in the County of Santa Clara.

35104. "Board of supervisors" means the Santa Clara County Board of Supervisors.

35105. "County" means the County of Santa Clara.

35106. "Developed parcel" means any parcel of land used or to be used for a developed purpose.

35107. "Developed purpose" means the use of a parcel of land for a residential, industrial, or commercial purpose.

35108. "Governing board" means the governing body of the authority or the interim governing board pursuant to Section 35123, as appropriate.

35109. If the electors do not approve the imposition of the special tax provided for by Chapter 5 (commencing with Section 35170), this division is repealed as of the date that the county certifies the election results to the Secretary of State and the authority is abolished on that date.

35110. Any action to determine the validity of the organization or of any action of the authority, including the validity of its bonds, 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. CREATION OF THE OPEN-SPACE AUTHORITY

35120. The Santa Clara County Open-Space Authority is hereby created on February 1, 1990. The maximum jurisdiction of the authority shall include all areas within the county, except those areas of the county presently within the boundaries of the Mid-Peninsula Regional Open-Space District. Each city situated within the maximum jurisdictional boundaries shall pass a resolution stating its intent to be included within the authority's jurisdiction by January 15, 1990. These resolutions shall be transmitted to the board of supervisors. Any city which fails to pass that resolution or which formally states its intent to not participate shall be excluded from the authority's jurisdiction. The creation of the authority is not subject to review by the Santa Clara County Local Agency Formation Commission.

35121. (a) If, after the establishment of the authority's boundaries pursuant to Section 35120, territory within the authority is annexed to a city which is outside the authority, that territory may be detached from the authority pursuant to the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code).

(b) If, after the establishment of the authority's boundaries pursuant to Section 35120, a city which is outside the authority's jurisdiction desires to be included within the authority's jurisdiction, the city council shall call an election on that question and place before its voters an ordinance which is substantially similar to the special tax ordinance approved pursuant to Chapter 5 (commencing with Section 35170). If two-thirds or more of the city's voters voting on the measure approve the ordinance, the city council shall notify the governing board which shall promptly adopt a resolution including the city within the authority's boundaries.

35122. Until the election of the governing board pursuant to Section 35123, the authority shall be governed by an interim governing board consisting of five members as follows:

(a) Three members appointed by the board of supervisors as follows:

(1) One member of the board of supervisors, whose supervisorial district is situated in part within the boundaries of the authority.

(2) Two members who are council members from the cities in the jurisdiction of the authority other than the City of San Jose and who are selected with the advice and consent of the city council on which they are members. The two members shall not be from the same city and, in an effort to achieve the broadest representation within the boundaries of the authority, shall be, where possible, from cities

which are not within the supervisorial district of the supervisor who is a member of the governing board.

(b) Two members appointed by the City Council of the City of San Jose, who are members of that council.

35123. (a) The interim governing board shall conduct the business of the authority and shall have all powers of the governing board until the election of the governing board.

(b) The interim governing board shall establish five or seven districts for the election of members of the governing board and shall adopt procedures for the election of members of the governing board for terms of four years. The election shall be conducted in the same manner as for elections in the county, and shall be held concurrently with the first statewide election following approval by the voters of a special tax adopted pursuant to Section 35171.

(c) Upon the election and qualifications of the members of the governing board pursuant to subdivision (b), the interim governing board is abolished.

(d) Notwithstanding subdivision (b), the members of the governing board elected at the first election of the authority shall meet as soon as practicable after taking office and shall classify themselves by lot into two classes, as nearly equal in number as possible. The terms of office of the class having the greater number shall be four years and the terms of office of the class having the lesser number shall be two years. Thereafter, all terms shall be for four years.

(e) Any vacancy on the governing board which occurs prior to the expiration of a term of office shall be filled by the governing board. However, the governing board, by resolution, may declare its intention to hold an election to fill a vacancy. Any election to fill a vacancy shall be held in the same manner as for elections in the county.

35124. Each member of the governing board may receive compensation in an amount set by the governing board, not to exceed seventy-five dollars ($75), for attending each meeting of the governing board. The number of meetings for which a member of the governing board may receive compensation shall not exceed two meetings in any calendar month.

CHAPTER 3. ADMINISTRATION

35130. (a) The governing board at its first meeting, and thereafter annually at the first meeting in January, shall select a chairperson who shall preside at all meetings and a vice chairperson who shall preside in his or her absence. 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, has all of the authority of the chairperson.

(b) The first meeting of the governing board shall be held on or

before February 15, 1990. Notwithstanding Section 35125 or any other provision of this division, no compensation shall be paid to members of the governing board, and no other expenses shall be incurred by the authority, prior to the date the county certifies to the Secretary of State that the voters have approved the special tax specified in Section 35171.

(c) The county or cities within the authority's boundaries may provide or lend staff, telephones, supplies, or equipment to the authority. The authority may reimburse the county or cities for anything provided under this subdivision from the special tax revenues if the special tax ordinance is approved by the voters.

35131. The governing board shall adopt rules for its proceedings consistent with the law of the state.

35132. A majority of the members of the governing board constitute a quorum for the transaction of business. All official acts of the authority require the affirmative vote of a majority of the members of the governing board, unless otherwise provided in this division.

35133. The acts of the authority shall be expressed by motion, resolution, or ordinance of its governing board.

35134. All meetings of the governing board shall be conducted pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code.

35135. The governing board shall do all of the following:

(a) Adopt an annual budget following the public hearing required under Section 35136, hire an independent staff of its own, and fix the compensation of its officers and employees.

(b) Adopt an administrative code, by ordinance, which prescribes the powers and duties of the authority officers, the method of appointment of the authority's 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) Prepare and submit a report to the board of supervisors and to the city council of each city in the authority's jurisdiction on or before January 1 of each year after the special tax is imposed. The report shall evaluate and report the progress made during the preceding fiscal year in the implementation of the expenditure plan adopted pursuant to Section 35176.

(e) Do any and all things necessary to carry out the purposes of this division.

35136. (a) Notice of the time and place of the public hearing for the adoption of the annual budget shall be published pursuant to Section 6061 of the Government Code, and shall be published not later than 30 days prior to the date of the hearing.

(b) The proposed annual budget shall be available for public inspection at least 30 days prior to the hearing.

35137. The authority may enter into a contract with the Board of

Administration of the Public Employees' Retirement System to include the employees of the authority in that retirement system who are eligible for membership therein, and the employees shall be entitled to the same benefits as state employees pursuant to Part 5 (commencing with Section 22751) of Division 5 of Title 2 of the Government Code.

CHAPTER 4. POWERS AND FUNCTIONS

35150. The authority may adopt a seal and alter it at its pleasure.

35151. 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.

35152. The authority may take by grant, appropriation, purchase, gift, devise, condemnation, or lease, and may hold, use, enjoy, and lease or dispose of real and personal property of every kind, and rights in real and personal property, within the authority's jurisdiction, necessary to the full exercise of its powers. The authority may accept and hold open-space easements and purchase development credits.

Priority for open-space acquisition should be focused on those lands closest, most accessible, and visible to the urban area. The remote ranchlands east of the westernmost ridgeline of the Diablo Range shall be acquired as permanent open-space only through conservation easement purchases or the granting of lands or conservation easements by owners to the authority.

Lands subject to the grant of an open-space easement executed and accepted by the authority in accordance with this division are enforceably restricted within the meaning of Section 8 of Article XIII of the California Constitution. An easement or other interest in real property may be dedicated for open-space purposes by the adoption of a resolution by the governing board, and any interest so dedicated may be conveyed only as provided in this section.

The authority may not validly convey any interest in any real property actually dedicated and used for open-space purposes without the consent of a majority of the voters of the authority voting at a special election called by the governing board and held for that purpose. Consent need not first be obtained for a lease of any real property for a period not exceeding 25 years if that real property remains in open-space use for the entire duration of the lease.

35153. The authority may exercise the right of eminent domain to take any property necessary or convenient to accomplish the purposes of this division, except that it may not take lands in active ranching, lands in agricultural production, or lands in timberland production zones which are not threatened by imminent conversion to developed uses. Furthermore, the authority shall not acquire any interest in real property by eminent domain unless the real property is contiguous to real property which is already owned by a public agency for open-space use. The right of eminent domain may only

be exercised upon the approval of a four-fifths vote of the governing board. If the property owner objects to the acquisition of his or her property by eminent domain, the property owner may, within 30 days of the governing board's vote, file a written objection with the legislative body of the city or county in which the property is located. If the property is located in more than one city or in the county and one or more cities, the property owner shall file his or her objection with the legislative body of the city or county which includes the larger portion of the property. If the property owner files a timely written objection, the legislative body shall consider the objection at a public hearing to be held within 45 days of its receipt. If the legislative body of a city upholds by a two-thirds vote, or the legislative body of a county upholds by a majority vote, the objection by determining that the acquisition is not in the best interests of the public within the authority's jurisdiction, the authority shall not exercise its right of eminent domain on that property.

35154. The authority may, upon a four-fifths vote of the governing board and after holding a public hearing pursuant to Section 6061 of the Government Code, exchange any real property dedicated and used for open-space purposes for real property that the governing board determines to be of equal or greater value and is necessary to be acquired for open-space purposes.

35155. All property acquired by the authority shall be properly maintained in a reasonable fashion consistent with the natural conditions existing upon the properties, and those properties immediately surrounding it. This maintenance obligation does not hold the authority to a higher standard of care, but is simply a statement of a basic function of the authority.

35156. The authority may plan, adopt, lay out, plant, develop, and otherwise improve, extend, control, operate, and maintain lands, trails, natural areas, and other facilities for public recreation or agricultural activities. The authority may impose fees for the utilization of its properties which do not exceed the cost of providing services.

35157. 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 in this division or by other statutes or regulations expressly applicable to this division.

35158. The authority may accept funds or donations from any public or private source for the purposes of acquisition of open-space lands or for projects which are in furtherance of the authority's open-space or greenbelting objectives within its jurisdiction. The authority may seek government grants and private donations.

35159. (a) The authority may contract with any person or public agency for any services, supplies, equipment, or materials, or for the construction or completion of any building, structure, or improvement.

(b) When a contract for any services, supplies, equipment, or materials, except for legal, architectural, or appraisal services,

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 governing board may accept the one it chooses. Contracts of fifty thousand dollars ($50,000) or less may be let by informal bidding procedures, but contracts of more than fifty thousand dollars ($50,000) shall be let by formal bidding procedures.

(c) 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 authority, or if there is none, it shall be posted in at least three public places in the authority. The notice shall distinctly state the nature of the contract.

(d) The governing board may reject any bids. If the governing board rejects all bids, it may either readvertise or adopt a resolution, by four-fifths vote, declaring that the contract can be performed more economically by the authority's employees or obtained at a lower price in the open market. Upon adoption of the resolution, the governing board may undertake the project without further complying with subdivisions (b) and (c).

(e) If bids are not received, the governing board may undertake the project without further complying with subdivisions (b) to (d), inclusive.

(f) In the case of an emergency, the governing board may adopt a resolution by a two-thirds vote of all the members of the governing board declaring that the public interest and necessity demand immediate expenditure of public money to safeguard life, health, or property. The governing board may expend any sum required in the emergency without submitting the expenditure to bid.

CHAPTER 5. SPECIAL TAX AND BOND ISSUANCE AUTHORIZATION

35170. The Legislature, by the enactment of this chapter, intends that the authority use any funds provided by this chapter to supplement existing local revenues being used for open-space acquisition, preservation, or maintenance purposes. The county and the cities within the jurisdiction of the authority are further encouraged to maintain their existing commitment of local funds for these purposes.

35171. (a) After complying with the requirements of subdivision (b), the governing board may, following notice and public hearing, propose by ordinance the adoption of a special tax for the purposes of the authority, in accordance with Section 35177. The proposition shall be submitted to the voters of the authority pursuant to Section 35173 and, upon the approval of two-thirds of the votes cast by voters voting upon the proposition, the authority may levy the tax.

(b) Before the governing board adopts the ordinance pursuant to subdivision (a), it shall first obtain resolutions of approval of the proposed special tax from a majority of the cities which also include

a majority of the population within the boundaries of the authority.

35172. The authority, in the ordinance, shall state each of the following:

(a) The nature of the special tax to be imposed.

(b) The maximum amount of tax to be imposed on the owner of each developed parcel, or separate categories of owners of developed parcels based upon their partially developed use of the parcels, except that the maximum rate that may be imposed on any owner may not exceed eighty dollars ($80) for each developed parcel.

(c) That the revenues derived from the special tax will be placed in the authority's general fund.

35173. (a) The county shall conduct an election called by the board of supervisors pursuant to Section 35171, and the authority shall reimburse the county for its cost in conducting the election, except that if the special tax is not approved by the electors and the authority is abolished, the county shall pay the cost of the election.

(b) The election shall be called and conducted in the same manner as provided by law for the conduct of elections by a county.

(c) The authority may enter into an agreement with the county tax collector for the collection of any special tax approved pursuant to this chapter at the same time and in the same manner as county taxes are collected. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to the special tax. The amount of compensation to be paid the county for the collection of the special tax shall be provided in the agreement between the authority and the county tax collector, but shall not exceed the reasonable costs of the services provided.

35174. (a) The special tax ordinance shall be applicable for the tax year in which the special tax ordinance is approved by the voters.

(b) Prior to the effective date of the ordinance, the authority may contract with the county to perform all functions incident to the administration and operation of the authority.

35175. (a) The revenues from taxes imposed pursuant to this chapter may be allocated by the authority for the administration of this division, including legal actions related thereto, and for acquisition, preservation, or maintenance of open-space and greenbelt areas only.

(b) A minimum of 80 percent of the net revenue from the area of the city shall be spent on open-space acquisition, preservation, or maintenance within the sphere of influence of that city.

(c) Of the amount allocated to a city pursuant to subdivision (b), not more than 15 percent of the net revenue from the area of the city may be utilized for open-space acquisition, preservation, or maintenance within the city's urban service area, as defined in Section 56080 of the Government Code.

(d) Subdivisions (b) and (c) do not apply in the case of any city whose urban service area boundaries are identical to its sphere of influence boundaries. In the case of such a city, a minimum of 80

percent of the net revenue from the area of the city shall be spent on open-space acquisition, preservation, or maintenance within the urban service area of the city.

(e) The governing board may, by a four-fifths vote, modify or eliminate any provision of subdivisions (a) to (d), inclusive.

(f) As used in this section, "net revenue from the area of the city" means the revenue generated from the special tax levied pursuant to this division on developed parcels located within a participating city's sphere of influence, as defined in Section 56076 of the Government Code, and implemented by the Santa Clara County Local Agency Formation Commission pursuant to Chapter 4 (commencing with Section 56425) of Part 2 of Division 1 of Title 6 of the Government Code, together with interest on that revenue, after deduction of the proportional share of the authority's administrative, operational, and maintenance expenses.

35176 (a) The authority shall review and assess the needs for acquisition, preservation, or maintenance of open-space lands. As part of this review and assessment, the authority shall solicit proposals from the cities in the county within the boundaries of the authority and from a citizens' advisory committee, the membership of which shall be determined by the authority based upon criteria which provides a broad representation of interests within the authority's jurisdiction. The authority shall adopt a procedure for evaluating these proposals in consultation with the cities and the citizens' advisory committee in the authority's jurisdiction.

(b) Based on the evaluation, the authority shall prepare a plan for the expenditure of the revenues expected to be derived from the special tax provided by this chapter, together with other federal, state, local, and private improvements, and funding.

(c) In addition to acquisition, preservation, or maintenance of open-space lands, the expenditure plan shall also include projections of revenues likely to be available in the next five years for capital, maintenance, and operational purposes. The expenditure plan shall be periodically reviewed and amended. Before adoption or amendment of an expenditure plan, the authority shall conduct public hearings on that plan. No expenditure for open-space lands shall occur until the initial five-year expenditure plan is approved.

35177. The authority, subject to approval of the voters, as provided in Section 35171, may impose an special tax in accordance with the requirements and limitations in Section 35172. Owners of developed parcels which are subject to contracts under the Williamson Act (Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code) shall be subject to a reduced tax rate.

35178. The board of supervisors, as part of the ballot proposition to approve the imposition of a special tax, shall seek authorization to issue bonds payable solely from the proceeds of the tax up to a specified dollar amount.

35179. (a) The bonds authorized by the voters concurrently with

the approval of the special tax may be issued by the authority at any time, and from time to time, payable solely from the proceeds of the tax. The bonds may be secured by a pledge of revenues from the proceeds of the special tax and may be known as limited tax bonds.

(b) The pledge of special taxes to the bonds authorized under this chapter has priority over the use of any of the special taxes for "pay-as-you-go" financing, except to the extent that priority is expressly restricted in the resolution authorizing the issuance of the bonds.

35180. (a) Bonds shall be issued pursuant to a resolution adopted at a public hearing for which notice has been provided pursuant to Section 6061 of the Government Code, by the authority by a four-fifths vote of the governing body.

(b) The authority shall authorize the issuance of bonds by resolution, which shall specify all of the following:

(1) The purposes for which the bonds are to be issued

(2) The maximum principal amount of the bonds.

(3) The maximum term for the bonds.

(4) The maximum rate of interest to be payable upon the bonds. This rate shall not exceed the maximum rate permitted by Section 53531 of the Government Code or any other applicable provision of law

(5) The maximum discount on the sale of the bonds. The bonds shall not be sold at less than 95 percent of the principal amount in the manner determined by the authority.

(6) The conditions under which the bonds may be called or redeemed, including the amount of any redemption premium.

(c) Each resolution shall provide for the issuance of bonds in the amounts as may be necessary, until the full amount of the bonds authorized has been issued. The full amount of bonds may be divided into two or more series with different dates of payment fixed for the bonds of each series. A bond need not mature on its anniversary date.

35181. 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.

35182. All accrued interest and premiums received on the sale of bonds shall be placed in the fund to be used for the payment of 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 debit was incurred. However, when the purposes have been accomplished, any money remaining shall be either transferred to the fund to be used for the payment of principal of and interest on the bonds, or placed in a fund to be used for the purchase of outstanding bonds of the authority from time to time 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.

35183. (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 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 holders 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.

35184. The authority may borrow money and incur indebtedness pursuant to Article 7 (commencing with Section 53280), Article 7.5 (commencing with Section 53480), 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.

35185. 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. Whenever any money or funds may, by any law now or hereafter enacted, may 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 this state may, by any law 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.

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

CHAPTER 1288

An act to amend Sections 21600, 21604, 21605, 21606, 21607, and 21608 of, and to add Sections 21606.5 and 21609 to, the Business and Professions Code, relating to junk dealers and recyclers.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature finds and declares that there has been an alarming increase in the theft and resale of personal property made from aluminum, such as irrigation pipe, sprinkler heads, highway signs, and highway guard rails, and that the burden of those losses have fallen upon both private individuals and the public. The Legislature further finds that junk dealers are currently required to obtain certain identifying information when they acquire those kinds of items, but that persons engaged in the aluminum recycling industry are not required to do so.

The Legislature finds that the requirement of identifying the source of junk acquired by junk dealers deters the theft of personal property for profit Therefore, it is the intent of the Legislature to require persons engaged in the business of recycling of junk to be subject to the same information collection requirements as junk dealers.

SEC. 2. Section 21600 of the Business and Professions Code is amended to read:

21600. As used in this article, "junk" means any and all secondhand and used machinery and all ferrous and nonferrous scrap metals and alloys, including any and all secondhand and used furniture or other personal property, other than livestock, or parts or portions thereof.

As used in this section, "scrap metals and alloys" includes, but is not limited to, materials and equipment commonly used in construction, agricultural operations and electrical power generation, railroad equipment, oil well rigs, nonferrous materials, stainless steel, and nickel which are offered for sale to any junk dealer or recycler, but does not include scrap iron, household generated waste, or aluminum beverage containers, as defined in Chapter 2 (commencing with Section 14502) of Division 12.1 of the Public Resources Code.

SEC. 3. Section 21604 of the Business and Professions Code is amended to read:

21604. Except as otherwise provided in this article, this article does not apply to:

(a) Any person who buys or sells junk acquired in the conduct of any business other than that of a junk dealer.

(b) Those purchases of scrap metal by a junk dealer when the

payment for the scrap metal is by check issued to the company represented as being the owner of the scrap.

(c) Scrap metal purchased or received from another junk dealer or recycler who has recorded, reported, and held the material as required. The purchase or receipt shall also be exempt from further holding or reporting provided that the selling party gives the buyer written assurance of this fact. The seller shall be held responsible for any failure to report or hold.

SEC. 4. Section 21605 of the Business and Professions Code is amended to read:

21605. (a) Every junk dealer and every recycler in this state is hereby required to keep a written record of all sales and purchases made in the course of his or her business.

(b) For purposes of this article, "recycler" means any processor, recycling center, or noncertified recycler, as those terms are defined in Chapter 2 (commencing with Section 14502) of Division 12.1 of the Public Resources Code, who buys or sells scrap metal that constitutes junk, as defined in Section 21600.

SEC. 5. Section 21606 of the Business and Professions Code is amended to read:

21606. (a) Every junk dealer and every recycler shall set out in the written record required by this article all of the following:

(1) The place and date of each sale or purchase of junk made in the conduct of his or her business as a junk dealer or recycler.

(2) The name, valid driver's license number and state of issue or California-issued identification card number, and vehicle license number including the state of issue of any motor vehicle used in transporting the junk to the junk dealer's or recycler's place of business.

(3) The name and address of each person to whom junk is sold or disposed of, and the license number of any motor vehicle used in transporting the junk from the junk dealer's or recycler's place of business.

(4) A description of the item or items of junk purchased or sold, including the item type and quantity, and identification number, if visible.

(5) A statement indicating either that the seller of the junk is the owner of it, or the name of the person he or she obtained it from, as shown on a signed transfer document.

(b) Any person who makes, or causes to be made, any false or fictitious statement regarding any information required by this section, is guilty of a misdemeanor.

SEC. 6. Section 21606.5 is added to the Business and Professions Code, to read:

21606.5. Every junk dealer or recycler shall, during normal business hours, allow periodic inspection of any premises maintained and any junk thereon for the purpose of determining compliance with the recordkeeping requirements of this article, and shall during those hours produce his or her records of sales and purchases and all

property purchased incident to those transactions which is in the possession of the junk dealer or recycler for inspection by any of the following persons:

(a) Any officer holding a warrant authorizing him or her to search for personal property.

(b) Any person appointed by the sheriff of any county or appointed by the head of the police department of any city.

(c) Any officer holding a court order directing him or her to examine the records or property.

SEC. 7. Section 21607 of the Business and Professions Code is amended to read:

21607. Every junk dealer and recycler shall preserve the written record required by this article for at least two years after making the final entry of any purchase or sale of junk or scrap metals and alloys as defined in Section 21600.

SEC. 8. Section 21608 of the Business and Professions Code is amended to read:

21608. (a) Any junk dealer or recycler who fails in any respect to keep the written record required by this article, or to set out in that written record any matter required by this article to be set out therein, is guilty of a misdemeanor.

Every junk dealer or recycler who refuses, upon demand pursuant to Section 21606.5, to exhibit the written record required by this article, or who destroys that record within two years after making the final entry of any purchase or sale of junk therein, is guilty of a misdemeanor.

(b) Any knowing and willful violation of subdivision (a) shall be punishable as follows.

(1) For a first offense, by a fine of not less than five hundred dollars ($500), or by imprisonment in the county jail for not less than 30 days, or by both the fine and imprisonment.

(2) For a second offense, by a fine of not less than one thousand dollars ($1,000), or by imprisonment in the county jail for not less than 30 days, or by both the fine and imprisonment. In addition to any other sentence imposed pursuant to this paragraph, the court may order the defendant to stop engaging in business as a junk dealer or recycler for a period not to exceed 30 days.

(3) For a third or any subsequent offense, by a fine of not less than two thousand dollars ($2,000), or by imprisonment in the county jail for not less than six months, or by both the fine and imprisonment. In addition to any other sentence imposed pursuant to this paragraph, the court shall order the defendant to stop engaging in business as a junk dealer or recycler for a period of 30 days.

SEC. 9. Section 21609 is added to the Business and Professions Code, to read:

21609. (a) Whenever any peace officer has probable cause to believe that property in the possession of a junk dealer or recycler is stolen, in lieu of seizing the property, the peace officer as defined in subdivision (b) of Section 21606.5, at his or her option, may place

a hold on the property for a period not to exceed 90 days. When a peace officer places a hold on the property, the peace officer shall give the junk dealer or recycler a written notice at the time the hold is placed, describing the item or items to be held plus the case number. During that period the junk dealer or recycler 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 junk dealer or recycler shall not be subject to civil liability for compliance with this section.

(b) Whenever property that is in the possession of a junk dealer or recycler is subject to a hold and the property is required by a peace officer in a criminal investigation, the junk dealer or recycler, upon reasonable notice, shall produce the property at reasonable times and places or may deliver the property to any peace officer 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 junk dealer or recycler 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 upon written notice to the scrap metal dealer or recycler. The notice shall be provided in a timely fashion

(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 junk dealer or recycler holding the property and authorize the release of the property to that person.

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 victim seeks to recover property that is subject to a hold, the junk dealer or recycler shall advise the victim 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.

(d) Upon conviction of any person for the theft of property placed on hold pursuant to this section, the court shall order the defendant to pay the junk dealer or recycler reasonable costs for storage of the property.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the

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

CHAPTER 1289

An act to amend Section 21632 of, and to add Section 21606 to, the Public Utilities Code, relating to airports.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 21606 is added to the Public Utilities Code, to read:

21606. Notwithstanding any other provision of law, no person or public entity shall submit an application to a federal agency to purchase, acquire, or operate an airport owned by the United States within this state, until the department has completed its evaluation and issued a recommendation pursuant to subdivision (d) of Section 21632.

SEC. 2. Section 21632 of the Public Utilities Code is amended to read:

21632. (a) The department may also acquire existing airports and air navigation facilities, but it shall not acquire any airport or air navigation facility owned or controlled by a political subdivision of this or any other state without the consent of the political subdivision.

(b) Whenever an airport owned or operated by the United States in this state ceases to be so owned or operated, the department, in consultation with local and regional transportation planning agencies, shall evaluate the present and future need for the airport in the state's public-use airport system, including the need for both the transportation of people and goods. This evaluation shall be completed prior to December 31, 1990, or within one year of the federal announcement setting the date of closure for any airport, if the latter action occurs after January 1, 1990. The purpose of the evaluation is to determine aviation needs and does not eliminate any requirement of the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) Prior to finalizing the evaluation, the department shall submit a copy of its report to the commission for review and comment. The commission shall complete its review and forward any comments to

the department not later than 45 days after receiving the evaluation.

(d) Upon completion of its evaluation, the department shall make a recommendation to the Legislature, the commission, the California Commission on Aviation and Airports, affected local agencies, and the appropriate federal agency for the airport's ownership and type of operation as a public-use airport, if the department determines that the airport would be of significant benefit to the state's airport system. It is the intent of the Legislature that the department, in making its recommendation, give priority for ownership and operation of these public-use airports to a local political subdivision or subdivisions acting jointly.

(e) Notwithstanding Section 21606, if a political subdivision or subdivisions acting jointly notify the department of their intentions to prepare a reuse plan for the airport, and simultaneously apply to the Federal Aviation Administration for a federal grant to develop an airport master plan for the airport, the department shall not make its recommendation pursuant to subdivision (d). If the department's evaluation determines that the airport would be of significant benefit to the state's airport system, and the political subdivision or subdivisions acting jointly fail to convert the federal airport to a civil public-use airport in accordance with the department's evaluation within five years of notification to the department, or fail to evidence substantial progress toward that purpose as determined by the department, then the department shall take action in accordance with subdivision (f).

(f) If the department determines the airport is of present or future benefit to the state's public-use airport system, and no political subdivision applies to the appropriate federal agency to acquire or operate the airport, or has notified the department of its intention to prepare a reuse plan for the airport and thereafter fails to act upon its application pursuant to subdivision (e), the department may, subject to subdivision (g), assist in the formation of a public entity to own and operate the airport which shall be representative of political subdivisions in the area which surrounds and is served by the airport, as determined by the department. If established, the owning and operating entity may, subject to subdivision (g), prepare and submit an application to the appropriate federal agency to acquire or operate, or acquire and operate, the airport as a public airport.

(g) Notwithstanding subdivision (f), if any political subdivision has previously applied to the appropriate federal agency to acquire and operate the airport as a public airport, has completed all required environmental and fiscal evaluations, and subsequently withdrew its application prior to December 31, 1988, the department shall not file any application to acquire or operate the airport or assist in the formation of a public entity to own and operate the airport.

CHAPTER 1290

An act to amend Sections 4582.8, 4585, 4587, and 4604 of, and to add Article 7.5 (commencing with Section 4593) to Chapter 8 of Part 2 of Division 4 of, the Public Resources Code, relating to forest practices.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 4582.8 of the Public Resources Code is amended to read:

4582.8. Within 10 days after a timber harvesting plan is determined to be in conformance under Section 4582.7, or within 10 days after receipt of a notice of timber operations or a nonindustrial timber harvest notice, the director shall transmit copies thereof to the State Board of Equalization.

SEC. 1.5. Section 4585 of the Public Resources Code, as added by Chapter 987 of the Statutes of 1987, is amended to read:

4585. Within one month after completion of the work described in the timber harvesting plan or nonindustrial timber harvest notice, 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.

SEC. 2. Section 4585 of the Public Resources Code, as amended by Section 8 of Chapter 987 of the Statutes of 1987, 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, 1991, or until the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first, and as of that date is repealed.

SEC. 3. Section 4585 is added to the Public Resources Code, to read:

4585. (a) Within one month after completion of the work described in the timber harvesting plan or nonindustrial timber harvest notice, 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 become operative on January 1, 1991, or upon the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first, and shall remain operative until Janaury 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 4. Section 4585 of the Public Resources Code, as added by Section 9 of Chapter 987 of the Statutes of 1987, is amended to read:

4585. Within one month after completion of the work described in the timber harvesting plan or nonindustrial timber harvest notice, 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 on January 1, 1994.

SEC. 5. Section 4587 of the Public Resources Code, as added by Chapter 170 of the Statutes of 1987, is amended to read:

4587. (a) Within five years after completion of timber operations on an area covered by a timber harvesting plan or nonindustrial timber harvest notice, a report of stocking shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures which shall be designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard

sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

SEC. 6. Section 4587 of the Public Resources Code, as amended by Section 3 of Chapter 170 of the Statutes of 1987, is amended to read:

4587. (a) Within five years after completion of timber operations on an area identified in a report submitted pursuant to Section 4585, a report of stocking with respect to that area shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

(c) This section shall remain in effect only until January 1, 1991, or until the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first, and as of that date is repealed.

SEC. 7. Section 4587 is added to the Public Resources Code, to read:

4587. (a) Within five years after completion of timber operations on an area identified in a report submitted pursuant to Section 4585 or nonindustrial timber harvest notice, a report of stocking with respect to that area shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

(c) This section shall become operative on January 1, 1991, or on the effective date of the rules and regulations adopted by the State Board of Forestry, pursuant to Senate Bill 1566, whichever date occurs first, and shall remain operative until January 1, 1994, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1994, deletes or extends that date.

SEC. 8. Section 4587 of the Public Resources Code, as added by Section 4 of Chapter 170 of the Statutes of 1987, is amended to read:

4587. (a) Within five years after completion of timber operations on an area covered by a timber harvesting plan or nonindustrial timber harvest notice, a report of stocking shall be filed by the timber owner or the owner's agent with the department. A separate report of stocking may be filed with the work completion report for those areas which meet stocking requirements upon completion of timber operations. The board, by regulation, shall establish one or more statistically valid standardized sampling procedures which shall be designed to measure the number of trees and their dispersion.

(b) Notwithstanding subdivision (a), the board shall adopt regulations which specify the conditions and manner in which the necessity of employing sampling procedures may be waived. The regulations shall provide that, in addition to any other possible conditions which may be required by the board, the standard sampling procedures may be waived only if the director or the director's representative and the timber owner or a registered professional forester acting as the owner's agent agree that the area is adequately stocked to meet the standards of this chapter and other applicable rules or regulations of the board. The regulations shall require that, if the director or the director's representative does not agree that the area is so stocked, a standardized sample shall be required.

(c) This section shall become operative on January 1, 1994.

SEC. 9. Article 7.5 (commencing with Section 4593) is added to Chapter 8 of Part 2 of Division 4 of the Public Resources Code, to read:

Article 7.5. Nonindustrial Timber Management Plan

4593. (a) The Legislature finds and declares that a substantial acreage of timberlands of the state are held by private nonindustrial owners and that it is the policy of the state to increase the productivity of these timberlands under prudent management plans to serve the public's need for timber and other forest products.

(b) The Legislature further finds and declares that minimal environmental harm is caused by prudent management of nonindustrial timberlands because low volume production and dispersion around the state of these small tracts reduces damage to aesthetics, air quality, watersheds, and wildlife.

(c) The Legislature further finds and declares that it is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving nonindustrial timber management plans in advance and withdrawing governmental discretion to disapprove nonindustrial timber harvest notices submitted pursuant to the approved nonindustrial timber management plans.

(d) It is not the intent of the Legislature by the enactment of this article to limit the penalties and enforcement provisions of this chapter.

4593.2. Notwithstanding Section 4521, unless the context otherwise requires, the following definitions govern construction of this article:

(a) "Nonindustrial timberlands" means timberland owned by a nonindustrial tree farmer.

(b) "Nonindustrial tree farmer" means an owner of timberland with less than 2,500 acres who has an approved nonindustrial management plan and is not primarily engaged in the manufacture of forest products.

(c) "Uneven aged management" means the management of a specific forest, with the goal of establishing a well stocked stand of various age classes and which permits the periodic harvest of individual or small groups of trees to realize the yield and continually establish a new crop.

(d) "Sustained yield" means the yield of commercial wood that an area of commercial timberland can produce continuously at a given intensity of management consistent with required environmental protection and which is professionally planned to achieve over time a balance between growth and removal.

(e) "Nonindustrial timber management plan" means a management plan for nonindustrial timberlands with an objective of an uneven aged managed timber stand and sustained yield for each parcel or group of contiguous parcels meeting the requirements of Section 4593.3.

(f) "Nonindustrial timber harvest notice" means notice of timber harvest operations pursuant to an approved nonindustrial timber management plan and meeting the requirements of Section 4594.

4593.3. A nonindustrial timber management plan may be filed with the department in writing by a person who intends to become a nonindustrial tree farmer with the long-term objective of an uneven aged timber stand and sustained yield through the implementation of a nonindustrial timber management plan. The management plan shall be prepared by a registered professional forester. It shall be a public record and shall include all of the following information:

(a) The name and address of the timberland owner.

(b) A description of the land on which the plan is proposed to be implemented, including a United States Geological Survey quadrangle map or equivalent indicating the location of all streams, the location of all proposed and existing logging truck roads, and indicating boundaries of all site I classification timberlands to be stocked in accordance with subdivision (b) of Section 4561 and any other site classifications if the board establishes specific minimum stocking standards for other site classifications.

(c) A description of the silviculture methods to be applied and the type of yarding equipment to be used.

(d) An outline of the methods to be used to avoid excessive accelerated erosion from timber operations to be conducted within the proximity of a stream.

(e) Special provisions, if any, to protect any unique area within the boundaries of the proposed nonindustrial timber management plan.

(f) A description of the existing stand, its current projected growth, alterations required to achieve the management objectives, the projected timber volumes and tree sizes to be available for harvest, and projected frequencies of harvest.

(g) A certification by the registered professional forester preparing the plan that he or she or a designee has personally inspected the plan area.

(h) Any other information the board provides by regulation to meet its rules and the standards of this chapter.

4593.4. The board shall adopt regulations regarding the notice of receipt of the proposed nonindustrial timber management plan. The notice shall be given within two working days following submission of the proposed management plan and shall be consistent with Horn v. County of Ventura, 24 Cal. 3d 605, and all applicable laws. In adopting the regulations, the board shall take account of the extent of the administrative burden involved in giving the notice. The method of notice shall include, but not be limited to, mailed notice. The regulations may require the person submitting the nonindustrial timber management plan to provide to the department a list of the names and addresses of persons to whom the notice is to be mailed.

4593.5. The department shall provide notice of the filing of nonindustrial timber management plans to any person who requests, in writing, that notification.

4593.6. Upon receipt of the nonindustrial timber management

plan, the department shall place it, or a true copy thereof, in a file available for public inspection in the county in which timber operations are proposed under the plan, and, for the purpose of interdisciplinary review, shall transmit a copy to the Department of Fish and Game, the appropriate California regional water quality control board, the county planning agency, and all other agencies having jurisdiction by law over natural resources affected by the plan. The department shall invite, consider, and respond in writing to comments received from public agencies to which the plan has been transmitted and shall consult with those agencies at their request.

4593.7. (a) The director has 45 days from the date the initial inspection is completed as provided in Section 4604, or a longer period mutually agreed upon by the director and the person submitting the nonindustrial timber management plan, to review the plan to determine if the plan is in conformance with the rules and regulations of the board and this chapter. If the director determines that the plan is not in conformance with the rules and regulations of the board or this chapter, the director shall return the plan, stating his or her reasons and advising the person submitting the plan of the person's right to a hearing before the board.

(b) If the director does not act within the time periods provided in subdivision (a), a longer period shall be negotiated and mutually agreed upon by the director and the person submitting the nonindustrial timber management plan. If a longer period cannot be mutually agreed upon, the nonindustrial timber management plan shall be deemed denied and returned to the person submitting the plan.

(c) A person to whom a plan is returned may, within 10 days from the receipt of the plan, request the board for a public hearing before the board. The board shall schedule a public hearing to review the plan to determine if the plan is in conformance with the rules and regulations of the board and this chapter. Board action shall take place within 30 days from the filing of the appeal, or a longer period mutually agreed upon by the board and the person filing the appeal. If the plan is not approved on appeal to the board, the director, within 10 days of board action, may determine that the plan is in conformance if the plan is revised to bring it into full conformance with the rules and regulations of the board and this chapter.

4593.8. The nonindustrial tree farmer may submit a proposed amendment to the approved plan and may not take any action which substantially deviates, as defined by the board, from the approved plan until the amendment has been filed with the director and the director has determined that the amendment is in compliance with the rules and regulations of the board and the provisions of this chapter which were in effect at the time the nonindustrial timber management plan was approved, in accordance with the same procedures specified in Section 4593.7.

4593.9. The nonindustrial tree farmer may take actions which do

not substantially deviate from the approved plan without the submittal of an amendment, but those actions shall be subsequently reported to the department. The board shall specify, by regulation, those nonsubstantial deviations which may be taken. The board shall specify the requirements for reporting those deviations.

4593.10. In the event of a change of ownership of the land described in the nonindustrial timber management plan, the plan shall expire 180 days from the date of change of ownership unless the new timberland owner notifies the department in writing of the change of ownership and his or her assumption of the plan.

4593.11. The nonindustrial tree farmer may cancel the nonindustrial timber management plan by submitting a written notice to the department. Once timber operations have commenced pursuant to a nonindustrial timber harvest notice, cancellation is not effective on land covered by the notice until a report of satisfactory completion has been issued pursuant to Sections 4585, 4586, and 4587.

4594. The nonindustrial tree farmer who owns, leases, or otherwise controls or operates on all or any portion of any timberland within the boundaries of an approved nonindustrial timber management plan, and who plans to harvest any of the timber thereon during a given year, shall file a nonindustrial timber harvest notice with the department in writing. A notice shall be filed prior to the harvesting of any timber and shall be effective for a maximum of one year from the date of filing. If the person who files the notice is not the owner of the timberland, the person filing the notice shall notify the timberland owner by certified mail that the notice has been submitted, and shall certify that mailing to the department. The notice shall be a public record and shall include all of the following information.

(a) The name and address of the timber owner.

(b) The name and address of the timber operator.

(c) The name and address of the registered professional forester preparing the nonindustrial timber harvest notice.

(d) A description of the land on which the work is proposed to be done.

(e) A statement that no archeological sites have been discovered in the harvest area since the approval of the nonindustrial timber management plan.

(f) A statement that no rare, threatened, or endangered plant or animal species has been discovered in the harvest area since the approval of the nonindustrial timber management plan.

(g) A statement that there have been no physical environmental changes in the harvest area that are so significant as to require any amendment of the nonindustrial timber harvest plan.

(h) A certification by the registered professional forester that the notice as carried out will implement best management practices for protection of the beneficial uses of water, soil stability, forest productivity, and wildlife as required by the current rules of the board, or a certification that practices consistent with the original

plan will not result in any significant degradation to the beneficial uses of water, soil stability, forest productivity, or wildlife.

(i) Special provisions, if any, to protect any unique area within the area of timber operations.

(j) The expected dates of commencement and completion of timber operations during the year.

(k) A statement that the harvesting notice conforms to the provisions of the approved management plan.

(*l*) Any other information the board provides by regulation to meet its rules and the standards of this chapter.

4594.2. The registered professional forester who prepares the nonindustrial timber management plan or prepares the notice, or any other registered professional forester who is employed by the owner or operator, shall report to the owner or operator if there are deviations from the plan which, in his or her judgment, threaten the attainment of the resource conservation standards of the plan.

4594.4. If the board finds that a registered professional forester has made any material misstatement in any nonindustrial timber harvesting notice, nonindustrial timber management plan. or report under this chapter, the board shall take disciplinary action against him or her as provided under Section 775.

4594.6. Notwithstanding any other provisions of this chapter, if a registered professional forester certifies by written declaration, on behalf of the timber owner or operator, that the nonindustrial timber harvesting notice conforms to, and meets the requirements of, the approved nonindustrial timber management plan under which it is filed, timber operations may commence immediately unless the notice has been filed by mailing, in which case operations may commence three days after the notice has been mailed.

4594.7. If it is determined that the objectives of uneven aged management and sustained yield are not being met by a nonindustrial tree farmer, or there are other persistent violations detected that are not being corrected, a previously approved nonindustrial timber management plan shall be canceled by the department and any further timber operations under the plan shall be terminated.

SEC. 10. Section 4604 of the Public Resources Code is amended to read:

4604. The department shall provide for an initial inspection of the area in which timber operations are to be conducted within 10 days from the date of filing of the timber harvesting plan or nonindustrial timber management plan, or a longer period as may be mutually agreed upon by the department and the person submitting the plan. The department shall provide for inspections, as follows:

(a) During the period of commencement of timber operations.

(b) When timber operations are well underway.

(c) Following completion of timber operations.

(d) At any other times as determined to be necessary to enforce this chapter.

SEC. 11. Section 4604 of the Public Resources Code is amended to read:

4604. (a) The department shall provide an initial inspection of the area in which timber operations are to be conducted within 10 days from the date of filing of the timber harvesting plan, or a longer period as may be mutually agreed upon by the department and the person submitting the plan, except that the inspection need not be made if the department determines that it would not add substantive information that is necessary to enforce this chapter. In any event, the department shall provide for inspections, as needed, as follows:

(1) During the period of commencement of timber operations.

(2) When timber operations are well under way.

(3) Following completion of timber operations.

(4) At any other times as determined to be necessary to enforce this chapter.

(b) (1) The Department of Fish and Game, the regional water quality control boards, or the State Water Resources Control Board, if accompanied by Department of Forestry and Fire Protection personnel and after 24-hour advance notification is given to the landowner, may enter and inspect land during normal business hours at any time after commencement of timber harvest plan activities on the land and before the director issues a report of satisfactory completion of stocking pursuant to Section 4588 or at any time before the end of the first winter period following the filing of a work completion report pursuant to Section 4585, whichever is later. Any member of the inspection party may utilize whatever measurement and evaluation devices, including, but not limited to, photographic equipment and temperature measurement devices, as determined to be necessary, when participating in an inspection of an area pursuant to subdivision (a) or after commencement of timber harvesting plan activities pursuant to this subdivision.

(2) Photographs taken during inspections shall be clearly labeled as to time, date, and location and shall be the property of the department and part of the inspection record. The inspection record shall be subject to all provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) This subdivision is not a limitation upon the authority of any agency to inspect pursuant to any other provision of law.

(c) This section shall remain in effect only until January 1, 1991, or until the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first, and as of that date is repealed.

SEC. 12. Section 4604 is added to the Public Resources Code, to read:

4604. (a) The department shall provide an initial inspection of the area in which timber operations are to be conducted within 10 days from the date of filing of the timber harvesting plan or nonindustrial timber management plan, or a longer period as may be

mutually agreed upon by the department and the person submitting the plan. The department shall provide for inspections, as follows:

(1) During the period of commencement of timber operations.

(2) When timber operations are well under way.

(3) Following completion of timber operations.

(4) At any other times as determined to be necessary to enforce this chapter.

(b) (1) The Department of Fish and Game, the regional water quality control boards, or the State Water Resources Control Board, if accompanied by Department of Forestry and Fire Protection personnel and after 24-hour advance notification is given to the landowner, may enter and inspect land during normal business hours at any time after commencement of timber harvest plan activities on the land and before the director issues a report of satisfactory completion of stocking pursuant to Section 4588 or at any time before the end of the first winter period following the filing of a work completion report pursuant to Section 4585, whichever is later. Any member of the inspection party may utilize whatever measurement and evaluation devices, including, but not limited to, photographic equipment and temperature measurement devices, as determined to be necessary, when participating in an inspection of an area pursuant to subdivision (a) or after commencement of timber harvesting plan activities pursuant to this subdivision.

(2) Photographs taken during inspections shall be clearly labeled as to time, date, and location and shall be the property of the department and part of the inspection record. The inspection record shall be subject to all provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) This subdivision is not a limitation upon the authority of any agency to inspect pursuant to any other provision of law.

(c) This section shall become operative on January 1, 1991, or on the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Senate Bill 1566, whichever date occurs first

SEC. 13. The State Board of Forestry shall adopt rules and regulations to implement Article 7.5 (commencing with Section 4593) of Chapter 8 of Part 2 of Division 4 of the Public Resources Code, not later than January 1, 1991. The rules and regulations shall include all of the following:

(a) The conduct by the Department of Forestry and Fire Protection of one or more preharvest inspections of the land on which a nonindustrial timber management plan is proposed to be implemented, prior to the Director of Forestry and Fire Protection taking action to approve or deny the plan.

(b) Procedures for the Department of Forestry and Fire Protection to follow in conducting inspections of annual timber operations for which a notice is filed pursuant to Section 4594 of the Public Resources Code, for purposes of determining (1) whether the

objectives of uneven aged management and sustained yield are being met for each parcel or group of contiguous parcels covered by the plan, and (2) compliance with the plan's other provisions, any rules and regulations of the State Board of Forestry, or Chapter 8 (commencing with Section 4511) of Part 2 of Division 4 of the Public Resources Code.

(c) Procedures for the Department of Forestry and Fire Protection to follow to cancel a nonindustrial timber management plan pursuant to Section 4594.7 of the Public Resources Code, or terminate timber operations conducted pursuant to the plan, if the objectives of uneven aged management and sustained yield are not being met, or there are persistent violations that are not corrected by the landowner or timber operator.

SEC. 14. The department shall, on or before January 1, 1998, report to the Governor and the Legislature with an evaluation on whether the objectives of uneven-aged management and sustained yield are being met for each parcel or group of contiguous parcels for which a nonindustrial timber management plan has been approved pursuant to this act.

SEC. 15. Sections 2, 3, and 4 of this bill incorporate amendments to Section 4585 of the Public Resources Code proposed by both this bill and SB 201. These sections shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4585 of the Public Resources Code, and (3) this bill is enacted after SB 201, in which case Section 1.5 of this bill shall not become operative.

SEC. 16. Sections 6, 7, and 8 of this bill incorporate amendments to Section 4587 of the Public Resources Code proposed by both this bill and SB 201. These sections shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4587 of the Public Resources Code, and (3) this bill is enacted after SB 201, in which case Section 5 of this bill shall not become operative.

SEC. 17. Sections 11 and 12 of this bill incorporate amendments to Section 4604 of the Public Resources Code proposed by both this bill and SB 201. These sections shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4604 of the Public Resources Code, and (3) this bill is enacted after SB 201, in which case Section 10 of this bill shall not become operative.

SEC. 18. Sections 1, 1.5, 5, 9, and 10 of this act shall become operative on January 1, 1991, or upon the effective date of the rules and regulations adopted by the State Board of Forestry pursuant to Section 13, whichever date occurs earlier.

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

CHAPTER 1291

An act to amend Sections 17039, 17052.4, and 23036 of, and to add and repeal Sections 17052.5 and 23601.5 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1 The Legislature hereby finds and declares that the development of energy technologies that diversify the sources of energy supply and reduce reliance on conventional fuels is essential to the continued growth of the California economy. The Legislature further finds and declares that solar energy systems can assist in meeting the state's energy needs while reducing the long-term use of conventional fuels and reducing adverse environmental impacts. The Legislature further finds and declares that tax credit incentives for the development of solar energy systems are necessary to achieve these public policy objectives.

The Legislature further finds and declares that it is necessary to protect public taxpayer moneys by ensuring that tax credits are directed only to those solar energy systems which further the public policy objectives of the Legislature by requiring that the State Energy Resources Conservation and Development Commission adopt guidelines and criteria that establish eligibility requirements for the credits, and by requiring that no credit for a solar energy system over 10 megawatts may be claimed unless the commission first finds that the solar energy system qualifies under those guidelines and criteria.

SEC. 2. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits). Credits shall be allowed against "net tax" in the following order:

(1) Credits which do not contain carryover or refundable provisions, except those described in paragraphs (4), (5) and (6).

(2) Credits which contain carryover provisions but do not contain refundable provisions.

(3) Credits which contain both carryover and refundable provisions.

(4) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(5) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(6) The low-income tax credit allowed by Section 17069.

(7) Credits which contain refundable provisions but do not contain carryover provisions.

For the purposes of paragraphs (2), (3), and (7), the order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 18551.1 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (7) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except --

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17053.5 (relating to the renter's credit).

(D) The credits allowed by Section 17054 (relating to personal exemption credits).

(E) The credit allowed by Section 17054.5 (relating to joint custody head of household).

(F) The credit allowed by Section 17058 (relating to low-income housing).

(G) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(H) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(I) The credit allowed by Section 18551.1 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) This section shall be applied in the computation of taxes for taxable years beginning on and after January 1, 1987.

SEC. 3. Section 17039 of the Revenue and Taxation Code is

amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits). Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits which do not contain carryover or refundable provisions, except those described in paragraphs (4), (5), and (6).

(2) Credits which contain carryover provisions but do not contain refundable provisions.

(3) Credits which contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) The low-income tax credit allowed by Section 17069.

(7) Credits which contain refundable provisions but do not contain carryover provisions.

For the purposes of paragraphs (2), (3), and (7), the order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 18551.1 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (7) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax (before reduction for the alternative credit for taxes paid to another state), as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.12 (relating to research expenses).

(D) The credit allowed by Section 17053.5 (relating to the renter's credit).

(E) The credit allowed by Section 17057 (relating to clinical testing expenses).

(F) The credit allowed by Section 17058 (relating to low-income

housing).

(G) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(H) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(I) The credit allowed by Section 18551.1 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) This section shall be applied in the computation of taxes for taxable years beginning on or after January 1, 1987.

SEC. 4. Section 17052.4 of the Revenue and Taxation Code is amended to read:

17052.4. (a) For taxable years beginning on or after January 1, 1987, and before January 1, 1989, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) and the tax imposed by Section 17062, relating to the alternative minimum tax, an amount equal to 12 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the taxable year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (k), the tax credit shall apply only to the principal recovery portion of lease payments for the term of the lease not to exceed 10 years, as defined in paragraph (2) of subdivision (m), which are made during the taxable year, and to the amounts which are expended on the purchased portion of the solar energy system, including installation charges, during the taxable year. For taxable years beginning on or after January 1, 1988, and before January 1, 1989, the credit percentage allowed by this section shall be 10 percent.

(b) The solar energy tax credit shall be claimed on the state income tax return for the taxable year in which the solar energy system was installed.

(c) A taxpayer who claimed the solar energy tax credit in the state income tax return for the taxable year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section, the cost of any solar energy system eligible for the credit shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be

reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(f) With the exception of a husband and wife, if there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(g) In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(h) In the case where the credit allowed under this section exceeds the "net tax," and the tax imposed by Section 17062, relating to the alternative minimum tax, the excess may be carried over to reduce the "net tax" and the tax imposed by Section 17062, relating to the alternative minimum tax, in the following year, and succeeding years if necessary, until the credit has been exhausted. This subdivision shall also apply to the credit allowed under former Section 17052.5 within the limitations of subdivision (e) of that section (except that "net tax" shall include the tax imposed under Section 17062).

(i) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior taxable year as energy conservation measures under this part.

(j) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of those systems shall be considered part of the systems, and shall be eligible for the tax credit. Qualified energy conservation measures installed within six months of the date of installation of the solar energy system are considered to be installed "in conjunction with" the solar energy system, even if the period spans two taxable years. In cases involving more than six months between the dates of installation of the energy conservation measures and the solar energy system, the taxpayer must be able to provide persuasive evidence that the energy conservation measures were in fact installed in conjunction with a solar energy system. Eligible conservation measures applied in conjunction with solar space heating include, but are not limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating include, but are not limited to, water heater insulation jackets, and shower and faucet flow reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the State Energy Resources Conservation and Development Commission as part of the solar energy system

eligibility criteria.

(k) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(*l*) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria may include, but are not limited to, minimum requirements for safety, reliability, and durability of solar energy systems. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(m) For purposes of this section, the following definitions shall apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment

buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners association.

(7) (A) "Solar energy system" means the use of solar devices for the individual function of:

(i) Domestic or service water heating.

(ii) Space conditioning.

(iii) Production of electricity.

(iv) Process heat.

(v) Solar mechanical energy.

"Solar energy system" includes, but is not limited to, passive thermal systems, semipassive thermal systems, active thermal systems, and photovoltaic systems.

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than three years.

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Passive thermal system" means a system which utilizes the structural elements of the building, and is not augmented by mechanical components, to provide for collection, storage, or distribution of solar energy for heating or cooling.

(10) "Active thermal system" means a system which utilizes solar devices thermally isolated from the commercial space to provide for collection, storage, or distribution of solar energy for heating or cooling.

(11) "Semipassive thermal system" means a system which utilizes the structural elements of a building and is augmented by mechanical components to provide for collection, storage, or distribution of solar energy for heating or cooling.

(12) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(n) Except for purposes of subdivision (h) of Section 17052.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 17052.5 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (*l*) of that section.

(o) This section shall remain in effect only until December 1, 1989, and as of that date is repealed. However, any unused credit may

continue to be carried forward, as provided in subdivision (h), until the credit has been exhausted.

SEC. 5. Section 17052.5 is added to the Revenue and Taxation Code, to read:

17052.5. (a) For taxable years beginning on or after January 1, 1990, and before January 1, 1994, there shall be allowed as a credit against the "net tax" (as defined by Section 17039), an amount equal to 10 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the taxable year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (j), the tax credit shall apply only to the principal recovery portion of lease payments, as defined in subdivision (*l*), for the term of the lease not to exceed 10 years, which are made during the taxable year, and to the amounts which are expended on the purchased portion of the solar energy system, including installation charges, during the taxable year.

(b) (1) The solar energy tax credit shall be claimed on the state income tax return for the taxable year in which the solar energy system was installed.

(2) The solar energy tax credit may not be claimed for any solar energy system with a generating capacity in excess of 30 megawatts for any taxable year for which the Internal Revenue Code does not allow at least a 10-percent tax credit for those solar energy systems which is equivalent in scope to the credit available under the Internal Revenue Code for the 1989 calendar year.

(c) A taxpayer who claimed the solar energy tax credit in the state income tax return for the taxable year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section, the cost of any solar energy system eligible for the credit shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(f) With the exception of a husband and wife, if there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(g) In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(h) In the case where the credit allowed under this section

exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(i) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior taxable year as energy conservation measures under this part.

(j) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(k) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria shall include, but are not limited to, minimum requirements for safety, cost-effectiveness in terms of dollars per kilowatt, market readiness, reliability, and durability of solar energy systems. Any solar energy system with a generating capacity in excess of 10 megawatts may claim the credit only if the owner of the solar energy system first obtains a finding from the commission that the system is eligible for the credit under the guidelines and criteria established pursuant to this subdivision. Any solar energy system certified by the commission pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code shall be deemed eligible for the credit. The Franchise Tax Board shall prescribe those regulations as may be necessary to carry out the purposes of this section.

(*l*) For purposes of this section, the following definitions shall apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

"Cost" includes all components to carry out the intended use of the system if they are an integral part of the system.

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners' association.

(7) (A) "Solar energy system" means the use of solar devices for the individual function of production of electricity in excess of 30 watts per device

"Solar energy system" includes, but is not limited to, solar thermal electric systems and photovoltaic systems.

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than five years.

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(m) Except for purposes of subdivision (h) of Section 17052.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 17052.5 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (*l*) of that section.

(n) This section shall remain in effect only until December 1, 1994, and as of that date is repealed. However, any unused credit may

continue to be carried forward, as provided in subdivision (h), until the credit has been exhausted.

SEC. 6. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) The term "tax" means:

(1) The tax imposed under Chapter 2 (commencing with Section 23101).

(2) The tax imposed under Chapter 3 (commencing with Section 23501).

(3) The tax on unrelated business taxable income, imposed under Section 23731.

(4) The tax on S corporations imposed under Section 23802.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 26131.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23610.5 (relating to low-income housing).

(E) Credits for taxes withheld under Section 26131.

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

SEC. 7. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) The term "tax" means:

(1) The tax imposed under Chapter 2 (commencing with Section 23101).

(2) The tax imposed under Chapter 3 (commencing with Section 23501).

(3) The tax on unrelated business taxable income, imposed under Section 23731.

(4) The tax on S corporations imposed under Section 23802.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 26131.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by Section 23601.4 (relating to solar

energy).

(C) The credit allowed by Section 23610.5 (relating to low-income housing).

(D) Credits for taxes withheld under Section 26131.

(E) The credit allowed by Section 23601.5 (relating to solar energy).

(F) The credit allowed by Section 23609 (relating to research expenditures).

(G) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

SEC. 8. Section 23601.5 is added to the Revenue and Taxation Code, to read:

23601.5. (a) For income years beginning on or after January 1, 1990, and before January 1, 1994, there shall be allowed as a credit against the "tax" (as defined by Section 23036), an amount equal to 10 percent of the cost of a solar energy system installed on premises, used for commercial purposes, which are located in California and which are owned by the taxpayer during the income year. For purposes of taxpayers who lease a solar energy system pursuant to subdivision (i), the tax credit shall apply only to the principal recovery portion of lease payments, as defined in subdivision (k), for the term of the lease not to exceed 10 years, which are made during the income year, and to the amounts expended on the purchased portion of the solar energy system, including installation charges, during the income year.

(b) (1) The solar energy tax credit shall be claimed on the state income tax return for the income year in which the solar energy system was installed.

(2) The solar energy tax credit may not be claimed for any solar energy system with a generating capacity in excess of 30 megawatts for any income year for which the Internal Revenue Code does not allow at least a 10-percent tax credit for those solar energy systems which is equivalent in scope to the credit available under the Internal Revenue Code for the 1989 calendar year.

(c) A taxpayer who claimed the solar energy tax credit on the state income tax return for the income year in which the solar energy system was installed may claim the credit in subsequent years for additions to the system or additional systems by the amount

prescribed in subdivision (a).

(d) For purposes of computing the credit provided by this section, the cost of any solar energy system eligible for the credit provided by this section shall be reduced by any grant provided by a public entity for that system.

(e) The basis of any system for which a credit is allowed shall be reduced by the amount of the credit and the amount of any grant provided by a utility or public agency for the solar energy system. The basis adjustment shall be made for the income year for which the credit is allowed.

(f) In the case of a partnership, the solar energy tax credit may be divided between the partners pursuant to a written partnership agreement.

(g) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

(h) No tax credit may be claimed under this section for any expenditures which have been otherwise claimed as a tax credit for the current or any prior income year as energy conservation measures under this part.

(i) Taxpayers who lease a solar energy system installed on premises in California shall receive a tax credit as provided in subdivision (a), if the lessee can confirm, if necessary, by a written document signed by the lessor that (1) the lessor irrevocably elects not to claim a state tax credit for the solar energy system, and (2) if the system is installed in a locality served by a municipal solar utility, that the lessor holds a valid permit from the municipal solar utility. Leasing requirements may be established by the State Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(j) The State Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. These guidelines and criteria shall include, but are not limited to, minimum requirements for safety, cost-effectiveness, in terms of dollars per kilowatt, market readiness, reliability, and durability of solar energy systems. Any solar energy system with a generating capacity in excess of 10 megawatts may claim the credit only if the owner of the solar energy system first obtains a finding from the commission that the system is eligible for the credit under the guidelines and criteria established pursuant to this subdivision. Any solar energy system certified by the commission pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code shall be deemed eligible for the credit. The Franchise Tax Board shall prescribe those regulations as may be necessary to carry out the purposes of this section.

(k) For purposes of this section, the following definitions shall

apply:

(1) "Installed" means placed in a functionally operative state.

(2) "Cost" includes equipment, installation charges, and compensation paid to the owner of burdened property in connection with the acquisition of a solar easement, as defined in Section 801.5 of the Civil Code, and the fees for the recording of the easement. In the case of a system which is leased, "cost" means the principal recovery portion of lease payments, which is the cost incurred by the taxpayer in acquiring the solar energy system, excluding interest charges and maintenance expenses.

"Cost" does not include interest charges and costs associated with the acquisition of an easement other than a solar easement.

"Cost" includes all components to carry out the intended use of the system if they are an integral part of the system.

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease or easement granting use of the premises, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises, a person who is a member of a nonprofit corporation or association which is a duly recorded holder of legal title, or a person who is a member of a nonprofit corporation or association which is a lessee with at least three years remaining on its lease.

(4) "Premises" means the principal stationary location in California where the system is installed for direct use or for purposes of sale of energy, and includes land, easements, and buildings or portions thereof.

(5) "Commercial purposes" means the installation of solar energy systems on premises other than single-family dwellings.

(6) "Single-family dwelling" means single-family residences, mobilehomes, and the individual units of condominiums.

"Single-family dwelling" does not include cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners' association.

(7) (A) "Solar energy system" means the use of solar devices for the individual function of production of electricity in excess of 30 watts per device.

"Solar energy system" includes, but is not limited to, solar thermal electric systems and photovoltaic systems .

For purposes of this section, "solar energy system" does not include solar devices for the individual function of wind energy for the production of electricity or mechanical work.

(B) Eligible solar energy systems shall have a useful life of not less than five years.

(8) "Solar device" means the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy. In the case of a solar device associated with two or more

solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(9) "Municipal solar utility" means a city, county, or municipal utility district, or agency thereof, which sells or leases solar or other energy generating equipment or energy saving devices for residential, commercial, agricultural, or industrial uses or which issues permits to companies engaged in the leasing of this equipment.

(*l*) Except for purposes of subdivision (g) of Section 23601.4, the provisions of this section shall not apply to any solar energy system which continues to qualify for the tax credit authorized by former Section 23601 (as amended by Chapter 1200 of the Statutes of 1986) by meeting the eligibility requirements of subdivision (j) of that section.

(m) This section shall remain in effect only until December 1, 1994, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (g), until the credit has been exhausted.

SEC. 9. The State Energy Resources Conservation and Development Commission shall report the environmental and fiscal benefits and the fiscal cost of this act to the Legislature no later than January 1, 1992.

SEC. 10. Sections 3 and 7 of this bill incorporate amendments to Sections 17039 and 23036 of the Revenue and Taxation Code proposed by this bill and AB 802. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Sections 17039 and 23036 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 802, in which case Sections 17039 and 23036 of the Revenue and Taxation Code, as amended by AB 802, shall remain operative only until the operative date of this bill, at which time Sections 3 and 7 of this bill shall become operative, and Sections 2 and 6 of this bill shall not become operative.

SEC. 11. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1292

An act to amend Section 214 of the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989.]

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

SECTION 1. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit, if during the immediate preceding fiscal year the excess of operating revenues, exclusive of gifts, endowments and grants-in-aid, over operating expenses has not exceeded a sum equivalent to 10 percent of those operating expenses. As used herein, operating expenses shall include depreciation based on cost of replacement and amortization of, and interest on, indebtedness

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization which meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code of 1986, of the organization, are not subject to the tax on unrelated business taxable income which is imposed by Section 511 of the Internal Revenue Code of 1986, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) "Occasional use" means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) which is incidental to the primary activities of the owner or the other organization.

(ii) "Fundraising activities" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the

property and any other organization using the property as provided in subparagraph (A) have filed with the assessor duplicate copies of valid unrevoked letters or rulings from the Internal Revenue Service which state that the owner and the other organization qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. The owner of the property and any other organization using the property as provided in subparagraph (A) shall also file duplicate copies of their most recently filed federal income tax returns.

Nothing in subparagraph (A), (B), or (C) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution which, in addition to complying with the foregoing requirements for the exemption of charitable organization in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the "welfare exemption." This exemption shall be in addition to any other exemption now provided by law and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article

XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, or corporations, which property and funds, foundations, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. The amendment of this paragraph made at the 1983–84 Regular Session of the Legislature does not constitute a change in,

but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or which is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), or Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property which would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property which is equal to the percentage which the number of low- and moderate-income elderly and handicapped families occupying the property is of the total number of families occupying the property.

As used in this subdivision, "low and moderate income" has the same meaning as the term "persons and families of low or moderate income" as defined by Section 50093 of the Health and Safety Code.

(g) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property which the portion of the property serving lower income households is of the total property in any year in which any of the following criteria are applicable:

(1) Twenty percent or more of the occupants of the property are lower income households whose rent does not exceed that prescribed by Section 50053 of the Health and Safety Code.

(2) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(3) The owner of the property is eligible for and receives

low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) Certify and ensure that there is a deed restriction, agreement, or other legal document which restricts the project's usage and which provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents do not exceed those prescribed by the terms of the financing or financial assistance.

(B) Certify that the funds which would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

As used in this subdivision, "lower income households" has the same meaning as the term "lower income households" as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property which would otherwise be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, "emergency or temporary shelter" means a facility which would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations which meet all the requirements of subdivision (a) and owned and operated by funds, foundations, or corporations which meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, educational purposes means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and shall not include those educational purposes and activities primarily for the benefit of an organization's

shareholders. Educational activities shall include the study of relevant information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

SEC. 2. The amendment of this section made at the 1989–90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, existing law.

CHAPTER 1293

An act to add Section 426.9 to the Health and Safety Code, relating to indoor air pollution.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. The Legislature of the State of California makes the following findings and declarations:

(a) The Legislature shares the concern of the United States Environmental Protection Agency and the United States Center for Disease Control regarding the increased risk of developing lung cancer faced by persons exposed to above-average levels of radon in their homes.

(b) The natural occurrence of radon gas, a known carcinogen, is the second leading cause of lung cancer in the United States and has a significant impact on the health of Californians.

(c) The risk posed by radon is regional, detectable, and substantially avoidable.

(d) The intention of the Legislature, by this enactment, is to provide responsible guidance and protection with respect to radon for the people of the state.

SEC. 2. Section 426.9 is added to the Health and Safety Code, to read:

426.9. (a) If model construction standards and techniques for controlling radon levels within new buildings are developed by the United States Environmental Protection Agency, the State Department of Health Services may adopt the standards and incorporate them into any radon assessment and mitigation plan which may be completed by the department and which becomes operative after January 1, 1990, unless the Department of Housing and Community Development adopts radon mitigation building standards, in which case the State Department of Health Services shall adopt no standards other than the standards adopted by the Department of Housing and Community Development.

Any radon assessment and mitigation plan shall include appropriate measures designed to detect, avoid, or dissipate

dangerous levels of radon gas at potential building sites or during construction of new residential buildings in areas affected by radon. Any of those measures shall be appropriately delineated so as to apply only to certain at-risk buildings and geographic areas, and the plan shall specify construction projects, building characteristics, and geographical areas to which the measures apply, to assure ease of compliance and consistency with the findings and assessment of the United States Environmental Protection Agency regarding radon risks. The plan may include reasonable provisions for testing and detection of radon at potential building sites as well as measures to provide for the appropriate radon-dissipating ventilation and insulation of new residential construction consistent with prevailing techniques.

(b) If regulations are adopted by the department to implement any radon assessment and mitigation plan completed by the department after January 1, 1990, no city, county, or other governmental agency may issue a permit to construct any building subject to state department regulation to any applicant who does not first comply with testing or building standards which may be implemented pursuant to this section.

(c) Any building standards which may be adopted pursuant to this section shall become effective as provided by Section 17958.

(d) In developing regulations pursuant to this section, the state department shall consider the methods and techniques which can provide an adequate level of safety at the lowest cost in order to reduce the impact on housing prices.

(e) Subdivisions (a) to (d), inclusive, shall only become operative if federal funds are available to the department for the purposes specified in this section, as determined by the department.

CHAPTER 1294

An act to amend Sections 11450, 11463, and 18350 of, to amend, repeal, and add Section 15200 of, to add Sections 5407, 11215, 11461, 11466.1, 11466.2, 11466.3, 11466.4, 11467, 16501.5, and 16501.7 to, to repeal and add Sections 11460 and 11462 of, and to repeal Sections 11462.6 and 11462.7 of, the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 5407 is added to the Welfare and Institutions Code, to read:

5407. (a) It is the intent of the Legislature that essential mental health assessment and treatment services be available to court wards

and dependents placed out-of-home or who are at risk of requiring out-of-home care. This can be best achieved at the community level through the active collaboration of county social service, probation, education, and mental health agencies.

(b) Therefore, using the Children's Mental Health Services Act as a guideline, the State Department of Mental Health, in consultation with the California Conference of Local Mental Health Directors, the State Department of Social Services, the County Welfare Directors Association, and the Chief Probation Officer's Association, shall do all of the following:

(1) By July 1, 1990, develop an individualized mental health treatment needs assessment protocol for court wards and dependents.

(2) By October 1, 1990, establish and maintain a special system of payment for supplemental mental health services rendered to court wards and dependents pursuant to this section.

(3) By October 1, 1990, establish, by regulation, all of the following:

(A) Definitions of priority ranking of subsets of the court wards and dependents target population.

(B) Definitions of priority supplemental services to be available to the target population.

(C) A certification procedure, to be employed by the local mental health director, which assures that only mental health services approved by the local mental health director shall be eligible for reimbursement under this section.

(4) Require that the annual County Short-Doyle Plan and Negotiated Net Amount Contract ensure that interagency collaboration and program services are structured in a manner which will facilitate future implementation of the goals of the Children's Mental Health Services Act. Components shall be added to the plans and contracts which specifically address the procedures to be implemented by the county in meeting the provisions of this section. The components are to be developed in collaboration with the county social services and probation departments. Plans and contracts submitted for department approval shall document that the procedures to be implemented in compliance with this section have been approved by the county social services department and the county probation department pursuant to an interagency agreement.

(c) Only those individuals within the target population as defined in regulation and determined to be eligible for services as a result of a mental health treatment needs assessment may receive services pursuant to this section. Priority services shall be provided by the county mental health program in accordance with the County Plan or Negotiated Net Amount Contract approved by the State Department of Mental Health and to the extent that funds are appropriated for the purposes of this section.

The counties shall be held harmless for failure to provide services

to those children identified in need of services for whom there is no funding.

(d) It is the intent of the Legislature to limit supplemental mental health treatment rates for the target population of this section to rates established pursuant to paragraphs (2) and (3) of subdivision (b), effective October 1, 1990. The State Department of Mental Health and the State Department of Social Services, in consultation with appropriate organizations, shall develop a plan to accomplish this intent that includes an analysis of access to, and availability of, mental health treatment for the target population. This plan shall be submitted to the Legislature by July 1, 1990.

(e) The department shall annually report to the Legislature on the service populations provided mental health treatment services pursuant to this section, the types and costs of services provided, and the number of children identified in need of treatment services who did not receive the services.

SEC. 2. Section 11215 is added to the Welfare and Institutions Code, to read:

11215. (a) The department, with the advice and assistance of the County Welfare Directors Association, the Chief Probation Officers Association, and foster care providers, shall develop performance standards and outcome measures for determining the appropriateness of out-of-home care placements made under the AFDC-Foster Care program and for the effective and efficient administration of the AFDC-Foster Care program. These performance standards shall link county administration of the AFDC-Foster Care program to the state funding of the AFDC-Foster Care program as specified in subdivision (c) of Section 15200.

(1) These performance standards shall be developed by July 1, 1993, and shall use the Child Welfare Services Case Management System as the data base by which to collect county specific information. The performance standards shall be designed to measure each county's performance in all of the areas over which the county has some degree of influence and other areas of measurable program performance which the department can demonstrate as areas over which county welfare and probation departments have adequate resources and can demonstrate meaningful managerial or administrative influence. These areas may include accuracy of eligibility determination, stability of foster care placement, appropriateness of level of care provided, compliance with statutory timeliness, and compliance with data reporting requirements. The performance standards system shall include, but not be limited to, outcome measures reflective of county placing agencies' use of the Level of Care Assessment Instrument specified in Section 11467.

(2) The department shall complete a report by January 1, 1994, on the performance standards system, the standards/outcome measures developed, and the method by which the system shall be implemented. The report shall also identify the appropriate circumstances when placement decisions should not be in keeping

with the level of care indicated with the Level of Care Assessment Instrument.

(A) This report shall be submitted to the Chairs of the Senate Appropriations Committee, the Senate Health and Human Services Committee, the Assembly Human Services Committee, and the Assembly Ways and Means Committee.

(B) Between January 1, 1994, and January 1, 1995, the department shall conduct at least two hearings on the proposed performance standards. One hearing shall be held in the northern part of the state, and one hearing shall be held in the southern part of the state.

(3) The performance standards system shall be implemented in conjunction with the implementation of the Child Welfare Services Case Management System. If the Child Welfare Services Case Management System is not implemented by July 1, 1993, as specified in Section 16501.5, the implementation of the performance standards system, as specified in paragraphs (4) and (5), shall be moved to a date two years after the date of implementation of the Child Welfare Services Case Management System.

(4) Regulations regarding the implementation of the performance standards system shall be adopted no later than July 1, 1994. These regulations shall specify both the performance standards system and the manner by which the percentage of state reimbursement to each county for the AFDC-Foster Care program shall be determined.

(5) Effective July 1, 1995, any county which does not meet the performance standards shall be liable for a decrease in the percentage of state reimbursement for the AFDC-Foster Care program to the amounts specified in paragraph (2) of subdivision (c) of Section 15200. This amount will be determined by the department at the start of each fiscal year, beginning with fiscal year 1995–96, pursuant to regulations developed as specified in paragraph (4).

(b) No later than January 1, 1995, the department shall report to the Legislature regarding the AFDC-Foster Care ratesetting system as specified in Section 11462. The report shall contain a review of the ratesetting system, and recommendations as to whether the system should be continued or an alternative system should be considered. The department shall use, but not be limited to, the information available from the Child Welfare Services Case Management System and the Level of Care Assessment Instrument as data sources for this report.

SEC. 3. Section 11450 of the Welfare and Institutions Code is amended to read:

11450. (a) For each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter, there shall be paid, notwithstanding minimum basic standards of adequate care established by the department under Section 11452, an amount of aid

each month which when added to the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1, is equal to the sums specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453:

Number of eligible needy persons in the same home	Maximum aid
1	$ 258
2	424
3	526
4	625
5	713
6	802
7	880
8	959
9	1,036
10 or more	1,114

If, when, and during such times as the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother in the amount which would otherwise be paid to one person, as specified in subdivision (a), from the date of verification of pregnancy if the mother, and child if born, would have qualified for aid under this chapter.

(c) The amount of seventy dollars ($70) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there

shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping service, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant or which is otherwise available to the county welfare department and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(A) A nonrecurring special need of thirty dollars ($30) a day shall be available for up to three weeks to families for the costs of temporary shelter. County welfare departments may increase the daily amount available for temporary shelter to large families as necessary to secure the additional bed space needed by the family. This special need shall be granted or denied immediately upon the family's application for homeless assistance. The three-week limit shall be extended one week based upon good cause or other circumstances defined by the department. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing within the three week limit.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence.

The last month's rent portion of the payment (1) shall not exceed 80 percent of the family's maximum aid payment without special needs for a family of that size and (2) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's maximum aid payment without special needs for a family of that size, in accordance with the maximum aid schedule specified in subdivision (a).

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (2) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) Eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to paragraph (2) is limited to once every 12 months.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in

their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(g) The department shall establish rules and regulations assuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

SEC. 3.5. Section 11450 of the Welfare and Institutions Code is amended to read:

11450. (a) For each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter, there shall be paid, notwithstanding minimum basic standards of adequate care established by the department under Section 11452, an amount of aid each month which when added to the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1, is equal to the sums specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453:

Number of eligible needy persons in the same home	Maximum aid
1	$ 258
2	424
3	526
4	625
5	713
6	802
7	880

8	959
9	1,036
10 or more	1,114

If, when, and during such times as the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother in the amount which would otherwise be paid to one person, as specified in subdivision (a), if the mother, and child if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision.

(c) The amount of seventy dollars ($70) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping service, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both

exempt and nonexempt, in excess of one hundred dollars ($100), the family shall also be entitled to receive an allowance for nonrecurring special needs

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant or which is otherwise available to the county welfare department and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(A) A nonrecurring special need of thirty dollars ($30) a day shall be available for up to three weeks to families for the costs of temporary shelter. County welfare departments may increase the daily amount available for temporary shelter to large families as necessary to secure the additional bed space needed by the family. This special need shall be granted or denied immediately upon the family's application for homeless assistance. The three-week limit shall be extended one week based upon good cause or other circumstances defined by the department. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing within the three week limit.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence.

The last month's rent portion of the payment (1) shall not exceed 80 percent of the family's maximum aid payment without special needs for a family of that size and (2) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's maximum aid payment without special needs for a family of that size, in accordance with the maximum aid schedule specified in subdivision (a).

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (2) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) Eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to paragraph (2) is limited to once every 12 months.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(g) The department shall establish rules and regulations assuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for

the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

SEC. 4. Section 11460 of the Welfare and Institutions Code is repealed.

SEC. 5. Section 11460 is added to the Welfare and Institutions Code, to read:

11460. (a) Foster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them. The department is designated the single organizational unit whose duty it shall be to administer a state system for establishing rates in the AFDC-FC program. State functions shall be performed by the department or by delegation of the department to county welfare departments.

(c) "Care and supervision" includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.

(1) For a child placed in a group home, care and supervision shall also include reasonable administration and operational activities necessary to provide the items listed in this subdivision.

(2) For a child placed in a group home, care and supervision may also include reasonable activities performed by social workers employed by the group home provider which are not otherwise considered daily supervision or administration activities.

(c) It is the intent of the Legislature to establish a standardized schedule of rates for group homes, effective July 1, 1990.

(d) It is the intent of the Legislature to establish group home rates, effective between July 1, 1989, and June 30, 1990, using current regulations and policies of the department. Therefore, group home rates during this period shall be established as follows:

(1) Initial rates for new programs of new providers shall be based on projected allowable and reasonable costs, and the projected Program Peer Group. In no case shall the per child per month rate exceed the following:

Program Peer Group	Rate
Family	$1,299
Social	1,856
Psychological	2,323
Psychiatric	3,432

(2) Initial rates for new programs of existing providers shall be based on projected allowable and reasonable costs, and the projected Program Peer Group. The initial per child per month rate shall be established at the least of the program's projected allowable and

reasonable costs, or the rate for the provider's most comparable existing program, or the following table based on the 85th percentile of rates for all programs in the Program Peer Group for the new program's projected peer group.

Program Peer Group	Rate
Family	$1,474
Social	2,291
Psychological	2,809
Psychiatric	3,816

Prior to the department establishing a new program rate, the provider shall submit, from the welfare or probation department of the host county or primary placing county, verification of the need for the new program for placement purposes and confirmation that this program will serve an entirely different population at an entirely different level of service than currently served by the provider's existing programs.

(3) (A) A new or existing provider with a new program, operating with an initial rate, which has a first six-month cost period that ends on or before April 30, 1990, may request a rate based on that first cost period. The department shall establish a rate based on the actual allowable and reasonable costs of the first cost period. In no case shall the rate exceed the 85th percentile of rates for all programs in the same Program Peer Group, as listed in paragraph (2). The rate request shall be received by June 30, 1990, for the rate request to be processed.

(B) A new or existing provider with a new program, operating with an initial rate, shall continue with the initial rate through June 30, 1990, if the new program has either of the following:

(i) A first six-month cost period that ends after April 30, 1990.

(ii) A first six-month cost period that ends on or before April 30, 1990, and either does not request a rate based on that first cost period, or does not submit the rate request by June 1, 1990.

(4) All other group home programs shall be paid at the rates paid during the 1988–89 fiscal year.

(5) All subsequent rates for these programs shall be established pursuant to Section 11462.

(e) A foster care provider that accepts payments, following the effective date of this section, based on a rate established under this section, shall not receive rate increases or retroactive payments as the result of litigation challenging rates established prior to the effective date of this section. This shall apply regardless of whether a provider is a party to the litigation or a member of a class covered by the litigation.

SEC. 6. Section 11461 is added to the Welfare and Institutions Code, to read:

11461. (a) For children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a

relative or nonrelated legal guardian, the per child per month rates in the following schedule shall be in effect for the period July 1, 1989, through December 31, 1989:

Age	Basic rate
0–4	$ 294
5–8	319
9–11	340
12–14	378
15–20	412

(b) (1) Any county that, as of the effective date of this section, has in effect a basic rate that is at the levels set forth in the schedule in subdivision (a), shall continue to receive state participation, as specified in subdivision (c) of Section 15200, at these levels.

(2) Any county that, as of the effective date of this section, has in effect a basic rate that exceeds a level set forth in the schedule in subdivision (a), shall continue to receive the same level of state participation as it received on the effective date of this section.

(c) The amounts in the schedule of basic rates in subdivision (a) shall be adjusted as follows:

(1) Effective January 1, 1990, the amounts in the schedule of basic rates in subdivision (a) shall be increased by 12 percent.

(2) For the 1990–91 fiscal year, the amounts in the schedule of basic rates in subdivision (a) shall be increased by an additional 5 percent.

(3) Beginning with the 1991–92 fiscal year, the schedule of basic rates in subdivision (a) shall be adjusted by the percentage change in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.

(d) (1) Any county that, as of the effective date of this section, receives state participation for a basic rate that exceeds the amount set forth in the schedule of basic rates in subdivision (a), shall receive an increase each year in state participation for that basic rate of one-half of the percentage adjustments specified in subdivision (c) until the difference between the county's adjusted state participation level for its basic rate and the adjusted schedule of basic rates is eliminated.

(2) If a county has, after receiving the adjustments specified in paragraph (1), a state participation level for a basic rate that is below the amount set forth in the adjusted schedule of basic rates for that fiscal year, the state participation level for that rate shall be further increased to raise it up to the amount in the adjusted schedule of basic rates.

(e) (1) As used in this section, "specialized care increment" means an approved amount paid with state participation on behalf of an AFDC-FC child requiring specialized care to a home listed in subdivision (a) in addition to the basic rate. On the effective date of

this section, the department shall continue and maintain the current ratesetting system for specialized care.

(2) Any county that, as of the effective date of this section, has in effect specialized care increments that have been approved by the department, shall continue to receive state participation for those payments.

(3) Any county that, as of the effective date of this section, has in effect specialized care increments that exceed the amounts that have been approved by the department, shall continue to receive the same level of state participation as it received on the effective date of this section.

(4) Except for subparagraph (A), beginning January 1, 1990, specialized care increments shall be adjusted in accordance with the methodology for the schedule of basic rates described in subdivision (c). No county shall receive state participation for any increases in a specialized care increment which exceeds the adjustments made in accordance with this methodology.

(A) It is the intent of the Legislature that for fiscal year 1991–92, an amount equal to 5 percent of the State Treasury appropriation for family homes be added to the total augmentation for the AFDC-FC program in order to provide incentives and assistance to counties in the area of specialized care. This appropriation shall be used, but not limited to, encouraging counties to implement or expand specialized care payment systems, to recruit and train foster parents for the placement of children with specialized care needs, and to develop county systems to encourage the placement of children in family homes. It is also the intent of the Legislature that in the use of these funds, federal financial participation shall be claimed whenever possible.

(5) The department shall report, in consultation with counties, the State Foster Parents Association, and representatives of other foster care providers, to the Legislature by December 31, 1990, on the department's specialized care ratesetting system regarding its effectiveness in meeting the special needs of children in foster care. At a minimum, the department's report shall address the following:

(A) A description of the current specialized care system and its strengths and weaknesses.

(B) The characteristics of children receiving specialized care and the cost of that care.

(C) The types of specialized care which are needed by children but which are not readily available for these children; the cost of providing that care; and the current placements of children with special needs in the absence of that care.

(D) The extent to which specialized foster family care can provide an alternative to group home care and the costs and savings which would be associated with greater emphasis on specialized family foster care.

(E) Recommendations on needed improvements to specialized family foster care.

(F) (1) As used in this section, "clothing allowance" means the amount paid with state participation in addition to the basic rate for the provision of additional clothing for an AFDC-FC child, including, but not limited to, an initial supply of clothing and school or other uniforms.

(2) Any county that, as of the effective date of this section, has in effect clothing allowances, shall continue to receive the same level as it received on the effective date of this section.

(3) Beginning January 1, 1990, clothing allowances shall be adjusted annually in accordance with the methodology for the schedule of basic rates described in subdivision (c). No county shall be reimbursed for any increases in clothing allowances which exceed the adjustments made in accordance with this methodology.

SEC. 7. Section 11462 of the Welfare and Institutions Code is repealed.

SEC. 8. Section 11462 is added to the Welfare and Institutions Code, to read:

11462. (a) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. For the purposes of this chapter, foster care providers licensed as group homes shall include Community Treatment Facilities (CTF's) licensed by the department. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(b) A group home program shall be classified according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each rate classification level (RCL) has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, "standardized schedule of rates" means a listing of the 14 rate classification levels, the single rate established for each RCL, and the rate floor for each RCL.

(e) The standardized schedule of rates shall be phased in commencing July 1, 1990.

(1) In order to phase in the standardized schedule of rates, a "rate floor" has been established for each RCL.

(2) The rate floor for fiscal year 1990–91 shall be 85 percent of the standard rate for each RCL. The rate floor shall be increased to 92.5 percent of the standard rate for fiscal year 1991–92 for each RCL, and shall be equal to the standard rate for each RCL for fiscal year 1992–93 and beyond.

(f) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) For a group home program for which the department established a rate effective prior to January 1, 1990, that took into account the program's historical costs, the department shall establish the rate for fiscal year 1990–91 by determining the RCL on a retrospective basis, according to the level of care and services actually provided between July 1 and December 31, 1989.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall immediately inform the department, and their rate shall be reduced to reflect the level of care and services actually being provided.

(g) The standardized schedule of rates for fiscal year 1990–91 is:

Rate Classification Level	Point Ranges	FY 1990–91 Standard Rate	FY 1990–91 Rate Floor (85%)
1	Under 60	$1,183	$1,006
2	60– 89	1,478	1,256
3	90–119	1,773	1,507
4	120–149	2,067	1,757
5	150–179	2,360	2,006
6	180–209	2,656	2,258
7	210–239	2,950	2,508
8	240–269	3,245	2,758
9	270–299	3,539	3,008
10	300–329	3,834	3,259
11	330–359	4,127	3,508
12	360–389	4,423	3,760
13	390–419	4,720	4,012
14	420 & Up	5,013	4,261

(1) Unless licensed as a CTF by the department, a group home program shall be classified at RCL level 1 through 12.

(2) A CTF shall be classified at level 13 or 14 as long as the group home program has the requisite number of points. A CTF which does not have the requisite number of points to be classified at level 13 or 14 shall be classified at the appropriate RCL 1 through 12.

(h) (1) For fiscal year 1990–91, the standardized schedule of rates

shall be implemented as follows:

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the fiscal year 1990–91 RCL shall receive their 1989–90 rate plus an amount equal to the California Necessities Index (CNI). The rate for fiscal year 1990–91 at which the state will participate shall not exceed the standard rate for the RCL.

(B) If the CNI increase to the group home program's fiscal year 1989–90 rate does not raise the group home program to the rate floor for the RCL, the group home program shall receive a rate equal to the rate floor for the RCL.

(C) A group home program which received an AFDC-FC rate for fiscal year 1989–90 at or above the standard rate for the RCL for fiscal year 1990–91 shall continue to receive that fiscal year 1989–90 rate.

(2) For fiscal year 1991–92 and fiscal year 1992–93, the standardized rate for each RCL shall be adjusted by an amount equal to CNI computed pursuant to the methodology described in Section 11453.

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the adjusted standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(B) A group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive that rate adjusted by an amount equal to the CNI. The rate for the current fiscal year shall not exceed the standard rate for the RCL and shall not be less than the rate floor for the RCL.

(3) Beginning with the 1993–94 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds.

(A) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the adjusted standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(B) Any group home program which received an AFDC-FC rate in the prior fiscal year below the adjusted standard rate for the RCL in the current fiscal year shall receive the adjusted RCL rate.

(i) (1) The rate for a new group home program of a new or existing provider shall be established at the rate floor for the new program's projected RCL.

(2) The department shall not establish a rate for a new program of a new or existing provider unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county; that the provider is capable of effectively and efficiently operating the program; and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(3) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(4) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Sections 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) (1) Group home providers that change their existing programs in any way that may affect their RCL or their AFDC-FC rates shall inform the department of the changes in a manner and within timeframes specified by the department. These changes include, but are not limited to, increases and decreases in licensed capacity, opening and closing of facilities, changes in a provider's administrative or corporate structure, changes in the types or level of care and services provided, and changes in the types of children accepted for placement. Failure to inform the department of these changes may result in a delay in the effective date of a rate increase, the termination of a provider's rates, a reduction in a provider's rates, the establishment of an overpayment which the provider is required to repay, and other actions specified by the department through regulations.

(2) Except as specified in subparagraph (A), a group home program which increases its licensed capacity and continues to provide the same level of care and services shall receive a rate that is the lesser of that program's existing rate prior to its expansion or the standard rate for its RCL.

(A) If the increase in a program's licensed capacity is five or less and the expansion occurs at a facility where the group home program is already being provided, then the program shall continue to receive its existing rate prior to the expansion.

(B) Group home programs that increase or decrease their licensed capacity and simultaneously change the level of care and services provided shall have their rates established in accordance with paragraphs (3) and (4).

(3) Except as specified in subparagraph (A), a group home program which increases the level of care and services provided, thereby changing that program's RCL, shall receive a rate equal to the greater of that program's existing rate or the rate floor for its new RCL.

(A) If the increase in the level of care and services changes a program's classification level by two or more RCLs, the provider shall submit satisfactory verification from county placing agencies, as specified in paragraphs (2) and (3) of subdivision (i).

(4) A group home program which decreases the level of care and services provided, thereby changing that program's RCL, shall receive a rate equal to the lesser of that program's existing rate or the standard rate for its new RCL.

(k) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section.

(*l*) The department shall, by October 1 each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care which may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

(m) Following the initial implementation of the group home ratesetting system described in this section, the department, with the advice and assistance of the counties and representatives of providers of group home care, may submit to the Legislature recommendations to modify the program classification point system, number of rate classification levels, amounts that make up the standardized schedule of rates, or other components of the system. These recommendations shall be based on the department's review and evaluation of the program classification system, group home cost data collected pursuant to Section 11466.3, and information from the Group Home Program Statements and Level of Care Assessments specified in Section 11467.

(n) It is the Legislature's intent to enact a Foster Care Ratesetting system which shall be used beginning July 1, 1993, to adjust the rates specified in subdivision (g), as adjusted pursuant to paragraphs (1) and (2) of subdivision (h). The primary goal of this system shall be to adjust rates as necessary to ensure an adequate supply of quality out-of-home care in each of the classifications specified in subdivision (g) while minimizing the costs of purchasing the care. The Legislature recognizes that there is a wide range of potential ratesetting systems that could have varying degrees of success in achieving this goal.

In order to provide the Legislature with the information it needs to choose the best possible ratesetting system, the Legislative Analyst shall report to the Legislature by December 1, 1991, on a variety of options for foster care ratesetting. Specifically, the report shall at a minimum assess (1) the possibility of modeling the ratesetting system after any of the various ratesetting systems used by the state in other programs, (2) any ratesetting system proposed by the department, (3) any ratesetting system proposed by any foster care provider, nonprofit organization representing providers of group home care and foster care in California, or by the California Welfare Director's Association. The report shall not include an assessment of any proposed ratesetting system if the written proposal is submitted to the Legislative Analyst after December 1, 1990, or if the written

proposal exceeds 50 double-spaced typewritten pages, or if the written proposal does not provide sufficient detail, in the judgment of the Legislative Analyst, to allow a comprehensive assessment. The report may also assess any ratesetting system identified by the Legislative Analyst in addition to those identified above.

In assessing each ratesetting sytem, the report shall, at a minimum, address all of the following: (1) the cost to administer the system, (2) the likelihood that the system will result in rates that are adequate to attract and maintain enough providers of foster care to prevent shortages of beds in specific geographic areas or within any of the categories of care specified in subdivision (d), and (3) the potential magnitude of rate increases that the system will generate in its first five years of operation. In order to provide the Legislative Analyst with the information that will be needed to address these effects, the department shall provide the Legislative Analyst with its estimates of each effect with respect to each proposed system by August 1, 1991.

The report shall also provide the Legislative Analyst's recommendations, if any, regarding which system the Legislature should enact.

SEC. 9. Section 11462.6 of the Welfare and Institutions Code is repealed.

SEC. 10. Section 11462.7 of the Welfare and Institutions Code is repealed.

SEC. 11. Section 11463 of the Welfare and Institutions Code is amended to read:

11463. (a) The department, with the advice, assistance, and cooperation of the counties and foster care providers, shall develop, implement, and maintain a ratesetting system for foster family agencies.

No county shall be reimbursed for any percentage increases in payments, made on behalf of AFDC-FC funded children who are placed with foster family agencies, which exceed the percentage cost-of-living increase provided in any fiscal year beginning on January 1, 1990, as specified in subdivision (c) of Section 11461.

(b) The department shall develop regulations specifying the purposes, types, and services of foster family agencies, including the use of those agencies for the provision of emergency shelter care. Distinction for ratesetting purposes shall be drawn between foster family agencies which provide treatment of children in foster families and those which provide nontreatment services.

(c) The department shall develop and maintain regulations specifying the procedure for the appeal of department decisions about the setting of an agency's rate.

SEC. 12. Section 11466.1 is added to the Welfare and Institutions Code, to read:

11466.1. (a) Group home providers shall comply with requests made pursuant to Section 10852. The department shall adopt regulations which shall specify the information requested, including

reasonable timeframes, and any penalty for failure to submit the requested information. The regulations shall specify penalties which may include reduction of the AFDC-FC rate or termination of the AFDC-FC rate.

(b) Effective July 1, 1990, the department shall not apply or enforce standards with regard to the reasonableness of expenditures pursuant to Section 11462 that are not made available to group home providers, in writing, prior to the beginning of the period for which a rate is established.

(c) The department shall consult with representatives of group home providers concerning the development of those standards and the modification of existing standards. Group home providers shall receive written notice of, and have the opportunity to comment upon, new and modified standards proposed by the department.

(d) The department shall make available to group home providers, in writing, any new or modified standards prior to the beginning of the period upon which a rate is calculated, if possible, or as quickly as it is administratively practical to do so. Notwithstanding subdivisions (b) and (c), in the event of an unanticipated circumstance or unusual expenditure, the department may exercise its discretion in interpreting what is an allowable or a reasonable expenditure. However, the department shall make those interpretations available to group home providers, in writing, as quickly as it is practical to do so.

SEC. 13. Section 11466.2 is added to the Welfare and Institutions Code, to read:

11466.2. (a) The department shall perform or have performed group home program and fiscal audits as needed. Group home programs shall maintain all child-specific, programmatic, personnel, fiscal, and other information affecting group home ratesetting and AFDC-FC payments for a period not less than seven years.

(b) The department shall develop regulations to correct a group home program's RCL, and to adjust the rate and to recover any overpayments resulting from an overstatement of the projected level of care and services.

SEC. 14. Section 11466.3 is added to the Welfare and Institutions Code, to read:

11466.3. The department shall collect group home cost data and monitor the cost of providing care and supervision, and social work services, to AFDC-FC recipients. These data shall include, but not be limited to, the costs incurred by group homes for employee wages and benefits.

SEC. 15. Section 11466.4 is added to the Welfare and Institutions Code, to read:

11466.4. A group home provider who disagrees with the rate determined by the department or adjusted by a program audit shall request an appeal by the director or the director's designee. The department shall adopt regulations establishing procedures for the departmental appeal process.

SEC. 16. Section 11467 is added to the Welfare and Institutions Code, to read:

11467. (a) By July 1, 1990, the State Department of Social Services, in consultation with the counties and foster care providers, shall develop a standard format for group home program statements for ratesetting, community care licensing, and county placement purposes.

(b) By July 1, 1990, the State Department of Social Services, in consultation with the State Department of Mental Health and the counties, shall develop a Level of Care Assessment Instrument which shall match the assessed needs of the dependent child and his or her family with the services provided at each Rate Classification Level established pursuant to Section 11462.

(c) By July 1, 1990, the State Department of Social Services, in consultation with the State Department of Mental Health, the Department of the Youth Authority, county probation departments, and the counties, shall develop a Level of Care Assessment Instrument which shall match the assessed needs of the ward and his or her family with the services provided by placement facilities at each Rate Classification Level established pursuant to Section 11462.

(d) The Level of Care Assessment Instrument developed pursuant to subdivisions (b) and (c) shall include specified indicators of a child's need for a mental health treatment needs assessment which is available to a child pursuant to Section 5407. The State Department of Social Services, in consultation with the State Department of Mental Health, the Department of the Youth Authority, county probation departments, and the counties, shall specify the criteria for determining when a mental health treatment needs assessment shall be conducted pursuant to Section 5407.

(e) No later than January 1, 1991, the department shall report to the Legislature on the requirements specified in subdivisions (a) to (d), inclusive.

SEC. 17. Section 15200 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 1092 of the Statutes of 1987, 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.

(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, 1995, or until two years after the implementation of the Child Welfare Services Case Management System as specified in Section 16501.5, whichever occurs last, and as of that date is repealed, unless a later enacted statute which is chaptered before July 1, 1990, or two years after the implementation of the Child Welfare Services Case Management System, deletes or extends that date.

SEC. 18. Section 15200 of the Welfare and Institutions Code, as amended by Section 9 of Chapter 1092 of the Statutes of 1987, is repealed.

SEC. 19. Section 15200 is added to the Welfare and Institutions Code, 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) For the adequate care of each child pursuant to subdivision (d) of Section 11450, as follows:

(1) For any county which meets the performance standards or outcome measures in Section 11215, an amount equal to 95 percent of the sum necessary for the adequate care of each child.

(2) For any county which does not meet the performance standards or outcome measures in Section 11215, an amount which shall not be less than 67.5 percent of one hundred twenty dollars ($120), and multiplied by the number of children receiving foster care in the county, added to an additional twelve dollars and fifty cents ($12.50) a month per eligible child.

(3) The department shall determine the percentage of state reimbursement for those counties which fail to meet the requirements of subparagraph (1) according to the regulations required by subdivision (b) of Section 11215.

(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) The State Department of Social Services shall not implement any change in the current 95/5 funding ratios to counties as a reimbursement for out-of-home care placement until the

development of a new performance standard system. The State Department of Social Services shall notify the Department of Finance when the new performance standard system is developed and ready for implementation. The Department of Finance, pursuant to the provisions of Section 28 of the Budget Act, shall notify the Joint Legislative Budget Committee in writing of its intent to implement a new performance standard that would impact the counties 95/5 funding allocation. The notification shall include the text of the draft regulations to implement the performance standards. Any adjustment in the 95/5 county funding allocation shall not be implemented sooner than 60 days after receipt and review of the new performance standard by the Joint Legislative Budget Committee and a review of the proposed changes by the Legislative Analyst.

(g) This section shall become operative on July 1, 1995, unless the Child Welfare Services Case Management System is not implemented statewide July 1, 1993, as specified in Section 16501.5. If the Child Welfare Services Case Management System is implemented later than July 1, 1993, this section shall become operative two years after the implementation of the Child Welfare Services Case Management System.

SEC. 20. Section 16501.5 is added to the Welfare and Institutions Code, to read:

16501.5. (a) In order to protect children and effectively administer and evaluate California's Child Welfare Services and Foster Care programs, the department shall implement a single statewide Child Welfare Services Case Management System no later than July 1, 1993.

(b) It is the intent of the Legislature in developing and implementing a statewide Child Welfare Services Case Management System to minimize the administrative and systems barriers which inhibit the effective provision of services to children and families by applying current technology to the systems which support the provision and management of child welfare services. Therefore, it is the intent of the Legislature that the Child Welfare Services Case Management System achieve all of the following:

(1) Provide child welfare services workers with immediate access to child and family specific information in order to make appropriate and expeditious case decisions.

(2) Provide child welfare services workers with the case management information needed to effectively and efficiently manage their caseloads and take appropriate and timely case management actions

(3) Provide state and county child welfare services management with the information needed to monitor and evaluate the accomplishment of child welfare services tasks and goals.

(4) Provide all child welfare services agencies with a common data base and definition of information from which to evaluate the child welfare services programs in terms of the following:

(A) Effectiveness in meeting statutory and regulatory mandates, goals, and objectives of the programs.

(B) Effectiveness in meeting the needs of the families and children serviced by the program.

(C) Projecting and planning for the future needs of the families and children served by the program.

(5) Meeting federal statistical reporting requirements with a minimum of duplication of effort.

(6) Consolidate the collection and reporting of information for those programs which are closely related to child welfare services, including foster care and emergency assistance.

(7) Utilize the child welfare services functionality defined in current and planned automated systems as the foundation for the development of the technical requirements for the Child Welfare Services Case Management System.

(c) It is the intent of the Legislature that the Child Welfare Services Case Management System shall provide the required comprehensive and detailed individual county data needed by the department to implement and monitor the performance standards system specified in Section 11215.

(d) If the Child Welfare Services Case Management System is not implemented statewide by July 1, 1993, Section 15200, which provides for State Treasury appropriations equal to 95 percent of the sum necessary for the adequate care of each child pursuant to subdivision (d) of Section 11450, shall remain in effect until two years after the implementation of the Child Welfare Services Case Management System.

SEC. 21. Section 16501.7 is added to the Welfare and Institutions Code, to read:

16501.7. The State Department of Social Services, in consultation with foster care group home providers and the counties, shall evaluate the feasibility of implementing a system of service outcome measures for foster care group homes and report to the Legislature by July 1, 1996. The department's evaluation and report shall include, but not be limited to, the feasibility of measuring differences in behavior or functioning of a child as a result of a placement in a group home, identifying the specific services which are provided by a group home to a child, and the extent to which these services assist in obtaining the child welfare case plan objectives for the child.

SEC. 22. Section 18350 of the Welfare and Institutions Code is amended to read:

18350. (a) Payments for 24-hour out-of-home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. These payments shall not constitute an aid payment or aid program.

(b) Payments shall only be made to children placed in privately operated residential facilities licensed in accordance with the

Community Care Facilities Act.

(c) Payments shall be based on rates established in accordance with Sections 11460 to 11467, inclusive.

(d) Payments for 24-hour out-of-home care under this section shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

SEC. 23. The State Department of Social Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this act. The adoption of regulations pursuant to this section in order to implement this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted pursuant to this section shall not be subject to the review and approval of the Office of Administrative Law. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 120 days unless the adopting agency complies with all of the provisions of Chapter 3.5 (commencing with Section 11340), as required by subdivision (e) of Section 11346.1 of the Government Code

SEC. 24. The State Department of Mental Health shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this act. The adoption of regulations pursuant to this section in order to implement this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted pursuant to this section shall not be subject to the review and approval of the Office of Administrative Law The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 120 days unless the adopting agency complies with all of the provisions of Chapter 3.5 (commencing with Section 11340), as required by subdivision (e) of Section 11346 1 of the Government Code.

SEC. 25. For the purpose of implementing this act in the 1989–90 fiscal year, there is hereby appropriated the sum of sixteen million forty-six thousand two hundred dollars ($16,046,200) in accordance with the following schedule:

(a) For local assistance in augmentation of Item 5180-101-001 of the Budget Act of 1989, from the General Fund to the State Department of Social Services $9,500,000

(b) For local assistance in augmentation of Item 5180-101-890 of the Budget Act of 1989, from the Federal Trust Fund to the State Department of Social Services $4,700,000

(c) For state support in augmentation of Item 5180-001-001 of the Budget Act of 1989, from the General Fund to the State Department of Social Services $1,482,950

(d) For state support in augmentation of Item 5180-001-890 of the Budget Act of 1989, from the Federal Trust Fund to the State Department of Social Services $263,250

(e) For state support in augmentation of Item 4440-001-001 of the Budget Act of 1989, from the General Fund to the State Department of Mental Health $100,000

It is the intent of the Legislature that ongoing costs related to the implementation of this act effective for the 1990–91 fiscal year and thereafter shall be funded through the annual budget process.

SEC. 26. Section 3.5 of this bill incorporates amendments to Section 11450 of the Welfare and Institutions Code proposed by both this bill and SB 991. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 11450 of the Government Code, and (3) this bill is enacted after SB 991, in which case Section 3 of this bill shall not become operative.

SEC. 27. 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. 28. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1295

An act to amend Sections 3541 and 14613 of, and to add Section 16404.5 to, the Government Code, relating to state government.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 3541 of the Government Code is amended to read:

3541. (a) There is in state government the Public Employment Relations Board which shall be independent of any state agency and shall consist of five members. The members of the board shall be appointed by the Governor by and with the advice and consent of the Senate. One of the original members shall be chosen for a term of one year, one for a term of three years, and one for a term of five years. The first term for the two new members of the board resulting from the expansion of the board to five members shall be reduced by the Governor as necessary so that the term of only one member of the board shall expire in any given year. Thereafter terms shall be for a period of five years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Members of the board shall be eligible for reappointment. The Governor shall select one member to serve as chairperson. A member of the board may be removed by the Governor upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the commission, and three members of the board shall at all times constitute a quorum.

(c) The board may delegate its powers to any group of three or more board members. Nothing shall preclude any board member from participating in any case pending before the board.

(d) Members of the board shall hold no other public office in the state, and shall not receive any other compensation for services rendered.

(e) Each member of the board shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2. In addition to his or her salary, each member of the board shall be reimbursed for all actual and necessary expenses incurred by him or her in the performance of his or her duties, subject to the rules of the State Board of Control relative to the payment of such expenses to state officers generally.

(f) The board shall appoint an executive director who shall be the chief administrative officer. The executive director shall appoint such other persons as may, from time to time, be deemed necessary

for the performance of the board's administrative functions, prescribe their duties, fix their compensation, and provide for reimbursement of their expenses in the amounts made available therefor by appropriation. The executive director shall be a person familiar with employer-employee relations. The executive director shall be subject to removal at the pleasure of the board. The Governor shall appoint a general counsel, upon the recommendation of the board, to assist the board in the performance of its functions under this chapter. The general counsel shall serve at the pleasure of the board.

(g) The executive director and general counsel serving the board on December 31, 1977, shall become employees of the Public Employment Relations Board and shall continue to serve at the discretion of the board. A person so employed may, independently of the Attorney General, represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested.

(h) The Governor shall appoint one legal adviser for each member of the board upon the recommendation of such board member. Each such appointee shall serve at the pleasure of the recommending board member and shall receive a salary as shall be fixed by the board with the approval of the Department of Finance.

(i) Attorneys serving the board on May 19, 1978, shall not be appointed as legal advisers to board members pursuant to subdivision (h) until such time as they have attained permanent civil service status.

(j) When the positions exempt from civil service which are authorized by this act are created, the Department of Finance shall delete the corresponding civil service positions in the board's 1978–79 budget.

(k) Notwithstanding subdivision (a), the member of the board appointed by the Governor for the term beginning on January 1, 1991, shall not be subject to the advice and consent of the Senate.

SEC. 2. Section 14613 of the Government Code is amended to read:

14613. There is in the Department of General Services the California State Police Division.

The Governor, upon the recommendation of the Director of General Services, and with the advice and consent of the Senate, shall appoint the chief of the division. The Director of General Services shall appoint members and employees of the division as may be necessary to protect and provide police services for state property and buildings and occupants thereof. Members and security officers of the division have the powers of peace officers as defined in the Penal Code.

Members of the division consist of the following: the chief, deputy chiefs, assistant chiefs, commanders, captains, lieutenants, sergeants, and officers. All other persons in the division are considered employees.

The division may provide for the physical security of any current or former constitutional officer of the state and any current or former legislator of the state.

Upon the request of the Chief Justice, the director, through the division, may provide appropriate protective services to any current or former member of the state courts of appeal and the California Supreme Court.

SEC. 3. Section 16404.5 is added to the Government Code, to read:

16404.5. Notwithstanding Section 16404, whenever the Chief of the California State Police Division, with the approval of the Director of General Services, deems it advisable to keep confidential a special investigation concerning embezzlement of public money, theft of public property, or the illegal use, possession, or sale of any controlled substance or other drug, claims for expenses related to the confidential special investigation may be presented by the chief in his or her own name with the statement that the charges have been incurred under this section. When so presented, the claims shall be paid from funds allocated for the use of the California State Police Division, not to exceed fifteen thousand dollars ($15,000) per calendar year. The claims are exempt from Section 925.6. Upon the completion of each confidential special investigation and in any event within one year after the payment of any claim, the chief shall file with the Controller vouchers in support of the claim. The Controller shall not divulge any information conveyed by the vouchers, except upon order of a court of record in cases where the information is relevant and material evidence or upon the enactment of a statute by the Legislature.

CHAPTER 1296

An act to amend Section 5714.2 of the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 5714.2 of the Welfare and Institutions Code is amended to read:

5714.2. (a) Subject to the approval of the department, at the end of the fiscal year, a county may retain unexpended funds allocated to it, exclusive of the amount required to care for patients in state hospitals, for 12 months for expenditure for mental health services in accordance with this part.

However, no funds to which this subdivision applies shall be used

for 24-hour hospital services.

(b) Each fiscal year, counties using state hospitals in excess of their annual state hospital day allocations shall receive an assessment against their local assistance allocation for that year. This assessment shall be based on the statewide variable per diem cost of care times the number of days used in excess of the annual allocation. However, counties having a state hospital day allocation lower than the statewide per capita average shall only be assessed an amount that, when combined with assessments for counties having a state hospital day allocation exceeding the statewide per capita average, will equal but not exceed the cost of overuse to state hospitals in excess of the state hospital appropriation. The State Department of Mental Health shall execute the assessments no later than 180 days after the end of each fiscal year.

(c) To the extent that funds are available, the department shall do all of the following:

(1) The assessment required by subdivision (b) shall be waived for counties which have a population of less than 125,000 according to the most recent estimates available from the Department of Finance.

(2) For counties with populations less than 170,000 according to the most recent estimate available from the Department of Finance, up to two patients utilizing state hospital days for two years or more under conservatorship shall not be counted toward that county's allocation of state hospital days; however, no conservatee shall remain in the state hospital solely to qualify for this exemption.

(d) Funds accruing from the assessments required pursuant to subdivision (b), less any costs incurred in the year of the assessments by state hospitals which are in excess of the state hospital appropriation, shall be allocated to underusing counties. Counties shall be allowed to expend these funds for mental health services and capital outlay purposes including the acquisition of land. Allocation of funds shall be made to counties who underused their state hospital day allocation in a given year and who have a proposal approved by the State Department of Mental Health. The amount of the allocation shall be the number of underutilized days in a fiscal year times the variable per diem cost as calculated for that year, or pro rata share of available funds, whichever is less. These funds shall be spent in accordance with the approved project plan and shall be subject to audit. All audit disallowance shall be returned to the State Department of Mental Health.

(e) Funds retained by a county pursuant to subdivision (b) may be expended for capital projects for services which have been approved in the county Short-Doyle plan, in order to enable counties to purchase and renovate facilities to house treatment programs which will act as an alternative to institutional care. The approval of the capital project shall be specifically approved by the department as a part of the annual Short-Doyle plan.

SEC. 2. The provisions of this act shall be operative only to the

extent that funds are appropriated for this purpose in the annual Budget 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 to avoid financial hardship for small population counties and to avoid the unnecessary penalizing of counties which have a state hospital day allocation lower than the statewide per capita average, it is necessary that this act go into immediate effect.

CHAPTER 1297

An act to amend Sections 11765, 11809, 11810.6, 11814, 11815, 11815.5, 11818.5, 11961, 11983, 11983.1, 11983.2, 11983.21, 11983.5, 11991.5, and 11993 of the Health and Safety Code, and to repeal and add Section 23197 of the Vehicle Code, relating to alcohol and drug abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1 Section 11765 of the Health and Safety Code is amended to read:

11765. (a) "County board of supervisors" includes county boards of supervisors in the case of counties acting jointly.

(b) "Agency" means the Health and Welfare Agency.

(c) "Secretary" means the Secretary of the Health and Welfare Agency.

(d) "County alcohol program plan" or "program plan" means the county alcohol plan, including a budget, adopted by the board of supervisors pursuant to Chapter 4 (commencing with Section 11795).

(e) "Board" means the State Advisory Board established pursuant to Section 11780.

(f) "Advisory board" means the county advisory board on alcohol problems established pursuant to Section 11805.

(g) "Alcohol program administrator" means the county alcohol program administrator designated pursuant to Section 11800.

(h) "State alcohol program" includes all statewide alcohol projects administered by the department and all county alcohol programs funded under this part.

(i) "Division" means the Division of Alcohol Programs in the department.

(j) "Health systems agency" means the health planning agency established pursuant to federal legislation cited as Public Law 93-641

of 1974.

(k) "Alcohol problems" means problems of individuals, families, and the community which are related to inappropriate alcohol use, and includes conditions usually associated with the terms "alcoholism" and "alcohol abuse."

(*l*) "Problem drinker" means anyone who has a problem related to the consumption of alcoholic beverages whether of a periodic or continuing nature, including, but not limited to, persons referred to as "alcoholics," "alcohol abusers," and "drinking drivers." These problems may be evidenced by substantial impairment to the person's physical, mental, or social well-being which adversely affects his or her abilities to function in the community.

(m) "Alcohol service" means any service that is specifically and uniquely designed to encourage recovery from problem drinking and to alleviate or preclude alcohol problems in the individual, his or her family, and the community.

(n) "Alcohol program" means a collection of alcohol services which are coordinated to achieve the specified objectives of this part.

(o) "Multiple Offender Drinking Driver Program" or "Licensed Program" means an alcohol service which has been issued a valid license by the department to provide services pursuant to Chapter 9 (commencing with Section 11837).

(p) "Clients-participants" means recipients of alcohol recovery program services.

SEC. 2. Section 11809 of the Health and Safety Code is amended to read:

11809. The advisory board:

(a) Shall participate in the planning process pursuant to Article 4 (commencing with Section 11810) of this chapter.

(b) Shall advise the county alcohol program administrator and the board of supervisors on policies and goals of the county alcohol program and on any other related matters the alcohol program administrator or the board of supervisors refers to it, or which are raised by the advisory board.

(c) Shall encourage and educate the public to understand the nature of alcohol problems, and encourage support throughout the county for development and implementation of effective alcohol programs.

(d) Shall review the community's alcohol program needs, services, facilities, and special programs.

(e) Shall review procedures used to ensure community involvement at all stages of the planning process leading to the formulation and adoption of the county alcohol program plan.

SEC. 3. Section 11810.6 of the Health and Safety Code is amended to read:

11810.6. The county alcohol program administrator, in accordance with the planning process approved by the board of supervisors, shall develop the county alcohol program plan. The county alcohol program plan shall contain all of the following:

(a) A description of the proposed uses of alcohol funds which addresses all of the following:

(1) A statement of the goals and objectives of the county alcohol program.

(2) A description of the alcohol programs, activities and services supported by this plan, and characteristics of the individuals to be served.

(3) Criteria and methods for the distribution of funds, including a description of the alcohol service needs of women, adolescents, ethnic minorities, the elderly, the disabled, and any other specific populations, a plan for how these needs will be met, both if new funds are available and if no new funds are available, and the time span within which the needs will be met.

(4) Criteria to evaluate the effective performance of programs and services supported by this program plan.

(5) Beginning in fiscal year 1985–86, a description of how the county has met the goals, objectives, and needs in the use of funds for the previous year as identified in that year's program plan.

(6) That the federally required percentage of the federal portion of grant funds shall be for prevention and early intervention services.

(b) Certification of compliance with all of the following requirements:

(1) The county shall conduct a public hearing on the proposed use and distribution of funds and any changes shall be made public within the county on a timely basis and in a manner which facilitates comments from interested persons.

(2) The county shall administer the county alcohol program in accordance with this division, and all other applicable state and federal laws and regulations, including civil rights.

(3) The review of the planning process and the county alcohol program plan by the county alcohol advisory board and approval by the board of supervisors. When the county alcohol program plan is submitted to the department, it shall be accompanied by a document indicating the plan has been reviewed by the county advisory board on alcohol problems.

(4) Monitoring of all services programs receiving state or federal funds or funds available pursuant to Section 1463.16 of the Penal Code.

(5) Agreement to any additional assurances which may become necessary as a result of changes in laws or regulations.

(c) Budget information on the programs, activities, and services supported by this program plan and assurance that its submission satisfies the program plan requirements.

SEC. 4. Section 11814 of the Health and Safety Code is amended to read:

11814. (a) The department shall estimate an allocation of state and federal funds available for each county to implement the approved program plan In making allocations, the department shall base its allocations on the population of each county. However, the

department shall assure that each small population county receives a minimum amount of funds to provide adequate alcohol services. The department may take into account other factors in making the allocations if the department finds that the factors relate to the level of alcohol problems in the county. No later than 45 days after introduction of the Budget Bill, the department shall notify each county regarding its preliminary allocation under this division, pending enactment of the Budget Bill. The 1984–85 fiscal year shall establish the base funding for the county alcohol and drug allocation for local programs. Beginning with the 1985–86 fiscal year, cost-of-living adjustments, if granted, shall be considered as tied to the base allocation established in the 1984–85 fiscal year, plus any subsequent cost-of-living adjustments. The department shall notify each county regarding its final allocation after enactment of the Budget Bill.

(b) A county with a population of 200,000 or less may shift funds between alcohol and drug programs at its discretion. These shifts shall be reflected in the county alcohol and county drug program plans. Prior to the county shifting funds between alcohol and drug programs, approval shall be requested and obtained by the county from the director. The request and approval shall be in writing. The request shall include a description of the process and procedures used by the county, including public hearings, in determining the need for the funding shift and shall be accompanied by resolutions of support from the county advisory board on alcohol problems and the county advisory board on drug programs. The request shall be submitted as part of the proposed annual county alcohol program plan submitted to the department by the board of supervisors pursuant to Section 11815.

(c) Notwithstanding any other provision of this section, the director may reduce funding below the base year amounts of counties which underspend their allocations by more than 5 percent for two consecutive years. Any reduction shall be limited to the difference between 5 percent of the allocation and the total amount unspent. The amounts underspent shall be based on the most recent cost reports.

SEC. 5. Section 11815 of the Health and Safety Code is amended to read:

11815. Within 90 days after notification of the final allocation of each year pursuant to Section 11814, the board of supervisors of each county which elects to apply for funds under this part shall adopt and submit to the department, in accordance with the approved planning process approved by the county board of supervisors pursuant to Section 11810.6 and any regulations adopted by the department, an annual county alcohol program plan for the current fiscal year of the state for alcohol services in the county or counties. The approved program plan. as amended, shall remain in effect to provide the basis for advance payment until the next year's plan is due. The purpose of a county alcohol program plan shall be to

provide the basis for reimbursement pursuant to this division and to coordinate services as specified in this chapter in a manner that avoids duplication, fragmentation of services, and unnecessary expenditures.

Each subsequent year, the county alcohol program plan shall provide for the most appropriate and economical use of all existing public and private agencies, licensed private institutions, and personnel. Counties with populations of 200,000 or less may submit a combined alcohol program plan and drug program plan which shall include a separate alcohol and a separate drug program budget.

The department, after consultation with county alcohol program administrators, shall develop standard forms to be used by the counties in the submission of the county alcohol program plan. The forms shall include terms and conditions relative to county compliance with applicable laws, regulations, standards, and guidelines.

SEC. 6. Section 11815.5 of the Health and Safety Code is amended to read:

11815.5. If the county desires to redirect any funds allocated by the department from the purposes identified in the county alcohol program plan previously submitted to the department, the county may amend the program plan, including the budget portion of the plan, and submit it to the department for approval pursuant to this article. Final plan amendments, including amendments to the budget portion of the plan, shall be submitted to the department by May 31 of the current fiscal year. Extentions of the May 31 deadline may be granted by the department on an individual request basis.

SEC. 7. Section 11818.5 of the Health and Safety Code is amended to read:

11818.5. (a) Counties shall submit a cost report reflecting the expenditure of funds allocated by the department. An annual cost report, for the fiscal year ending June 30, shall be submitted to the department by November 1.

(b) Each county shall be responsible for reviewing its contracts with providers of services and the department may audit these contracts. The cost reports shall be reviewed by the department and interim settlements of claims shall be made expeditiously with each county. Final settlement shall be made at the time of audit, which shall be completed within three years of the date the cost report was accepted for interim settlement by the department. If the audit is not completed within three years, the interim settlement shall be considered as the final settlement.

(c) Counties shall report estimated numbers and characteristics of clients-participants by type of service in the annual county alcohol program plan and shall report actual numbers and characteristics of clients-participants served by type of service with the annual cost report. The department, after consultation with county alcohol program administrators, shall specify forms and procedures to be followed in reporting this information. The fiscal reporting system

established pursuant to this section shall supersede the requirements of paragraph (2) of subdivision (b) of Section 16366.7 of the Government Code for a quarterly fiscal reporting system.

SEC. 8. Section 11961 of the Health and Safety Code is amended to read:

11961. As used in this chapter:

(a) "Administrator" means the county drug program administrator designated pursuant to Section 11962.

(b) "Governing body" means the county board of supervisors or boards of supervisors in the case of counties acting jointly.

(c) "County drug program plan" means the drug program plan, as required pursuant to Section 11983.1.

(d) "Advisory board" means the county advisory board established pursuant to Section 11964.

(e) "Drug abuse services" means any service directed toward early intervention in, or alleviation or prevention of, drug abuse, including, but not limited to, diagnosis, evaluation, treatment, information, referral, consultation, and community services.

(f) "Director" means the Director of the State Department of Alcohol and Drug Programs.

(g) "Association" means the Association of the County Drug Program Administrators.

(h) "Provider" means an agency or person under contract with the county which provide drug program services, or county-operated services, or licensed or certified agencies offering drug services.

(i) "Clients-participants" means recipients of drug recovery program services.

SEC. 9. Section 11983 of the Health and Safety Code is amended to read:

11983. Each county drug program plan and program budget shall be reviewed by the state department according to the provisions of this part and the guidelines and regulations adopted by the state department pursuant to this part.

The department shall estimate an allocation of state and federal funds available for each county to implement its approved program. In making allocations to counties, the department shall base its allocations on the population of each county. However, the department shall assure that each small population county receives a minimum amount of funds to provide adequate drug services and shall establish the minimum allocation as not less than the 1984–85 drug allocation to those counties, unless the condition as stated in subdivision (c) of Section 11983.5 exists. The department may take into account other factors in making the allocations if the department finds that the factors relate to the level of drug problems in the county. Not later than 45 days after introduction of the Budget Bill, the department shall notify each county regarding its preliminary allocation under this division, pending enactment of the Budget Bill. The department shall notify each county regarding the

final allocation after enactment of the Budget Bill.

SEC. 10. Section 11983.1 of the Health and Safety Code is amended to read:

11983.1. Within 90 days after notification of the final allocation of each year, pursuant to Section 11983 the board of supervisors of each county which elects to apply for funds under this part shall adopt and submit to the department in accordance with the planning process approved by the board of supervisors pursuant to Section 11983.2 and in conformance with the requirements of Section 11966 and any regulations promulgated by the department, an annual county drug program plan for the current fiscal year of the state beginning July 1 for drug services in the county or counties. The approved program plan, as amended, shall remain in effect to provide the basis for advance payments until the next year's plan is due. The purpose of a county drug program plan shall be to provide the basis for reimbursement pursuant to this division and to coordinate services as specified in this chapter in a manner that avoids duplication, fragmentation of services, and unnecessary expenditures.

Counties of population of 200,000 or less may submit a combined drug program and alcohol program plan providing a separate drug and a separate alcohol program budget is included.

The department shall develop standard forms to be used by the counties in the submitting of the county drug program plan. The forms shall include terms and conditions relative to county compliance with applicable laws, regulations, standards, and guidelines.

SEC. 11. Section 11983.2 of the Health and Safety Code is amended to read:

11983.2. The county drug program plan shall include all of the following:

(a) A description of the proposed uses of the drug program funds which addresses all of the following:

(1) A statement of the goals and objectives of the county drug program.

(2) A description of the drug program, activities, and services supported by this plan, and characteristics of the individuals to be served.

(3) Criteria and methods for the distribution of the funds, including details on how the distribution of funds will be targeted on the basis of need.

(4) Criteria to evaluate the effective performance of programs activities and services supported by this grant.

(5) Beginning in fiscal year 1985–86, a description of how the county has met the goals, objectives and needs in the use of funds for the previous year as identified in that year's program plan.

(6) Counties shall report estimated numbers and characteristics of clients-participants by type of service in the annual county drug program plan and shall report actual numbers and characteristics of clients-participants served by type of service in a format prescribed

by the department in consultation with the California Association of County Drug Program Administrators.

(b) Certification of compliance with all of the following requirements:

(1) County shall conduct a public hearing on the proposed use and distribution of funds and any changes shall be made public within the county on a timely basis and in such manner as to facilitate comments from interested persons.

(2) County shall administer the county drug program in accordance with this division and all other applicable state and federal requirements including civil rights.

(3) Review the planning process and the county drug program plan by the county drug advisory board and approval by the county board of supervisors.

(4) Permit and cooperate with specified state reviews and audits.

(5) Monitoring of all drug programs receiving state or federal funds under this part.

(c) Budget information on the programs, activities and services supported by this drug program plan.

(d) List of unmet needs.

SEC. 12. Section 11983.21 of the Health and Safety Code is amended to read:

11983.21. If the county desires to redirect any funds allocated by the department from the purposes identified in the county drug program plan previously submitted to the department, the county may amend the program plan including the budget portion of the plan and submit it to the department for approval pursuant to this article. Final plan amendments including amendments to the budget portion of the plan shall be submitted to the department by May 31 of the current fiscal year. Extentions to the May 31 deadline may be granted by the department on an individual request basis.

SEC. 13. Section 11983.5 of the Health and Safety Code is amended to read:

11983.5. (a) The 1984–85 fiscal year establishes base funding for the county drug allocation. It is the intent of the Legislature to assure the integrity and separate identity of a state drug abuse service by providing a separate allocation that is specifically for the drug abuse programs. Beginning with the 1985–86 fiscal year, cost-of-living adjustments, if granted, shall be tied to the previous year's base allocation.

(b) A county with a population of 200,000 or less may shift funds between alcohol and drug programs at its discretion to fund alcohol and drug program services, as funded under, and defined in, subdivision (m) of Section 11765 and subdivision (e) of Section 11961. These shifts shall be reflected in the county alcohol and drug program plans. Prior to the county shifting funds between alcohol and drug programs, approval shall be requested and obtained by the county from the director. The request and approval shall be in writing. The request shall include a description of the process and

procedures used by the county, including public hearings, in determining the need for the funding shift and shall be accompanied by resolutions of support from the county advisory board on alcohol problems and the county advisory board on drug programs. The request shall be submitted as part of the proposed annual county drug program plan submitted to the department by the board of supervisors pursuant to Section 11983.1.

(c) Notwithstanding any other provision of this section, the director may reduce funding below the base year amounts of counties which underspend their allocation for two consecutive years by more than 5 percent. Any reduction shall be limited to the difference between 5 percent of the allocation and the total amount unspent. The amounts underspent shall be based on the most recent cost reports.

(d) Upon approval by both parties, the county drug program plan shall be deemed to be a contract between the state and county. The county drug program plan shall not be subject to review pursuant to Section 14780 of the Government Code.

SEC. 14. Section 11991.5 of the Health and Safety Code is amended to read:

11991.5. (a) Charges shall be made for services rendered to each person under a county drug program plan in accordance with this section. Charges for the care and treatment of each client receiving service under a county drug plan shall not exceed the actual cost thereof as determined by the director in accordance with standard accounting practices. The director is not prohibited from including the amount of expenditures for capital outlay or the interest thereon, or both, in his or her determination of actual cost. The responsibility of a client, his or her estate, or his or her responsible relatives to pay the charges shall be determined in accordance with this section.

(b) Each county shall determine the liability of clients rendered services under a county drug program plan and of their estates or responsible relatives to pay the charges according to ability to pay. Each county shall collect the charges. The county shall establish and maintain policies and procedures for making the determinations of liability and collections, by collecting third-party payments and from other sources to the maximum extent practicable. Fees collected shall be retained at the local level and be applied toward the purchase of additional drug services.

(c) Services shall not be denied because of a client's ability or inability to pay. County-operated and contract providers of treatment services shall set and collect fees using methods approved by the county drug program administrator. All approved fee systems must conform to all of the following guidelines and criteria:

(1) The fee system used shall be equitable.

(2) The fee charged shall not exceed actual cost.

(3) Systems used shall consider the client's income and expenses.

(4) Each provider fee system shall be approved by the county drug program administrator. A description of each approved system

shall be on file in the county board office.

(d) To ensure an audit trail, the county and or provider shall maintain all of the following records:

(1) Fee assessment schedules and collection records.

(2) Documents in each client's file showing client's income and expenses, and how each was considered in determining fees.

(e) Each county shall furnish the director with a cost report of information he or she shall require to enable the director to maintain a cost-reporting system of the costs of drug program services in the county funded in whole or part by state-administered funds. The cost-reporting system established pursuant to this section shall supersede the requirements of paragraph (2) of subdivision (b) of Section 16366.7 of the Government Code for a quarterly fiscal reporting system. An annual cost report, for the fiscal year ending June 30, shall be submitted to the department by November 1.

(f) The Legislature recognizes that drug programs may provide a variety of services described in this part which will vary, depending on the needs of the communities which the programs serve. In devising a system to assure that counties have expended their funds pursuant to their approved program plans, including the budget portions of the plans, the department shall take into account the flexibility that counties shall have in the provision of services and the changing nature of drug programs in responding to the community's needs.

The department shall maintain a reporting system to assure that counties have budgeted and expended their funds pursuant to their approved county drug program plans.

SEC. 15. Section 11993 of the Health and Safety Code is amended to read:

11993. Payments or advances of funds to cities, counties, cities and counties, or other state agencies, which are properly chargeable to appropriations to the department, may be made by a Controller's warrant drawn against state funds appropriated to the department or federal funds administered by the department. No more than one-twelfth of the amount to be allocated to a given entity for the fiscal year may be advanced each month.

SEC. 16. Section 23197 of the Vehicle Code is repealed.

SEC. 17. Section 23197 is added to the Vehicle Code, to read:

23197. (a) Except as provided in subdivision (c), an order to pay any fine, restitution, or assessment, imposed as a condition of the grant of probation or as part of a judgment of conditional sentence for a violation of Section 23152 or 23153, may be enforced in the same manner provided for the enforcement of money judgments.

(b) A willfull failure to pay any fine, restitution, or assessment during the term of probation, is a violation of the terms and conditions of probation.

(c) If an order to pay a fine as a condition of probation is stayed, a writ of execution shall not be issued, and any failure to pay the fine is not willful, until the stay is removed.

SEC. 18. 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.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 19. 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:

(a) Chapter 1118 of the Statutes of 1986 contained ambiguous language pertaining to the order of probation for persons convicted of driving while under the influence of alcohol or drugs. Some jurisdictions have interpreted this provision to preclude the court from placing a defendant on formal probation under the supervision of a probation officer.

(b) Annually, in September, each county submits both alcohol and drug plans to the State Department of Alcohol and Drug Programs. The statutory guidelines for preparation and submission for each of these plans is different, thereby creating an unnecessary duplication of effort at the county and state levels.

In order to ensure that the court has the ability, when deemed appropriate, to order formal probation for persons convicted of driving under the influence of alcohol or drugs and to eliminate, before the September 1989 submission due date of the county alcohol and drug plans, the costs associated with the unnecessary duplication of effort, it is necessary for this act to take effect immediately.

CHAPTER 1298

An act to add Section 94310.5 to the Education Code, relating to postsecondary education.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 94310.5 is added to the Education Code, to read:

94310.5. A nonaccredited institution shall not issue, confer, or award an academic or honorary degree pursuant to Section 94310.2 or 94310.3 if the institution allows more than 20 percent of the credit towards a degree to be life or work experience credit.

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

CHAPTER 1299

An act to amend Section 19622 of the Business and Professions Code, relating to district agricultural associations, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Section 19622 of the Business and Professions Code is amended to read:

19622. The following amounts are hereby annually appropriated out of the fund:

(a) Two hundred sixty-five thousand dollars ($265,000) for the support and administration of the California Exposition and State Fair.

(b) Two hundred fifty thousand dollars ($250,000) for the support and administration of the Los Angeles County Fair.

(c) Two hundred fifty thousand dollars ($250,000) for the support

and administration of the 1-A District Agricultural Association.

(d) One hundred seventy-five thousand dollars ($175,000) to the 1-A District Agricultural Association for conducting annually a junior livestock show and exposition for students in California schools, grades K to 12, inclusive.

CHAPTER 1300

An act to amend Section 31580.2 of, and to add Article 2.1 (commencing with Section 31510) to Chapter 3 of Part 3 of Division 4 of Title 3 of, the Government Code, relating to the County Employees Retirement Law of 1937, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Article 2.1 (commencing with Section 31510) is added to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to read:

Article 2.1. Additional Plan for Counties of the First Class

31510. (a) This article shall be applicable to all members of the retirement system of any county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961.

(b) The purpose of this article is to provide a defined contribution plan which, in conjunction with retirement benefit provisions otherwise contained in this chapter, will provide approximately the same level of retirement benefits to persons who first become members on or after January 1, 1990, and are subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986, as they would receive under the other retirement benefit provisions in the absence of those limitations, while not affecting the rate of either member or employer contributions to the retirement system. In addition, it is intended that subdivisions (c) and (d) constitute an election under Section 415(b)(10)(C) of the Internal Revenue Code of 1986 with respect to all retirement plans within the retirement system.

(c) Notwithstanding any other provision of this part, the benefits payable to any person who first becomes a member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986, as adjusted pursuant to Section 415(d)(1)(A) and (B).

(d) Notwithstanding any other law, the benefits payable to any

person who first became a member prior to January 1, 1990, shall not be subject to the limitations set forth in Section 415(b) of the Internal Revenue Code of 1986, except to the extent required by subsection (b)(10)(A) of Section 415.

(e) The election described in subdivision (b) shall apply to all employers whose employees are members of the retirement system of the county on December 31, 1989.

(f) The retirement benefits of all persons who first become members of the retirement system on or after January 1, 1990, and participate in Safety Plan B or General Plan D shall be governed by this chapter applicable to those plans and by this article.

(g) Subdivisions (c) and (d) shall not become operative until the board of supervisors has taken the actions required by subdivision (a) of Section 31510.2.

(h) In the event of a conflict, this article shall supersede and prevail over other provisions or application of provisions otherwise contained in this chapter.

31510.1. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board" means the board of retirement.

(b) "Employer" means the county, district, or agency whose employees are members of the retirement system of the county.

(c) "General Plan F" means the defined contribution plan established in accordance with this article for the benefit of certain members of General Plan D.

(d) "Plan F" means General Plan F and Safety Plan F, collectively.

(e) "Prior plan" means Safety Plan B or General Plan D, as the context requires.

(f) "Safety Plan F" means the defined contribution plan established in accordance with this article for the benefit of certain members in Safety Plan B.

31510.2. (a) The board of supervisors of any county subject to this article shall establish two defined contribution retirement plans authorized by Section 401 of the Internal Revenue Code of 1986. The terms of the plans shall be mutually agreed to by the employer and employee representatives of affected employees prior to adoption or amendment by the board of supervisors. The plans shall be known as General Plan F and Safety Plan F.

(b) Any general member described in subdivision (f) of Section 31510 shall participate in General Plan F, and any safety member described in subdivision (f) of Section 31510 shall participate in Safety Plan F, after commencement of his or her participation in the prior plan.

(c) The board, upon the advice of the actuary, shall determine the portion of the member contributions otherwise required under the prior plan that shall be credited to plan F in lieu of being credited to the other plan. In doing so, the board shall provide for the level of contributions to plan F that is the minimum amount sufficient to

satisfy the purposes set forth in subdivision (b) of Section 31510.

(d) The right of the member to benefits derived from member contributions vests under plan F upon the commencement of participation in plan F.

(e) In the event that a member or beneficiary becomes entitled to receive a benefit in the form of an annuity under the terms of the prior plan, the member's account in plan F shall be converted to the same form of annuity as is payable to the member or beneficiary from the prior plan. The amount of the annuity payable under the prior plan, calculated prior to the application of this article (including the limitations set forth in Section 415 of the Internal Revenue Code of 1986), shall be reduced by the amount of the annuity generated under plan F as described in the preceding sentence. The amount payable from plan F shall be paid at the same time and in the same manner as the annuity payable from the prior plan and may be provided through an annuity contract purchased from an insurance company, at the discretion of the board. Notwithstanding the foregoing, if the member's account in plan F does not exceed three thousand five hundred dollars ($3,500), it shall be paid to the member or beneficiary as a lump-sum payment, in lieu of the benefit otherwise payable under plan F.

(f) If a member or beneficiary becomes entitled to receive the member's accumulated contributions and interest from the prior plan, the member or beneficiary shall receive the member's account balance from plan F consisting of the member's accumulated contributions and actual earnings at the same time and in the same manner.

(g) In applying the limitations set forth in Section 415 of the Internal Revenue Code of 1986, benefits or annual additions in qualified retirement plans maintained by an employer separate from the retirement system shall be reduced first. Any additional reduction shall be made to the benefits from plans within the retirement system other than plan F, and then lastly to the annual addition to plan F.

(h) Plan F shall be administered in accordance with subsection (a) of Section 401 of the Internal Revenue Code of 1986 and the Treasury Regulations issued thereunder. The plan shall state that it is intended to be a profit-sharing plan wherein contributions are determined without regard to current or accumulated profits.

(i) For the purpose of this article, the term "annuity" means the combined benefit provided by an annuity, as defined in Section 31457, and the pension, as defined in Section 31471.

31510.3. It is intended that disability benefits payable from the retirement system pursuant to Article 10 (commencing with Section 31720), in the event of the member's termination of employment for disability, are compensation for personal injury or sickness, and therefore would not be subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986. If the Internal Revenue Service rules that the disability benefits are subject to those

limitations, any employer which is subject to this article shall provide an alternate disability benefit equal to the decrease in the disability benefit caused by application of those limitations, through a long-term disability plan which shall be separate from the retirement system. The terms of that long-term disability plan shall be mutually agreed to by the employer and employee representatives and adopted by the board of supervisors.

31510.4 It is intended that the maintenance of plan F not affect the rate of either member or employer contributions to the retirement system. The board may set a rate of regular interest credited to contributions to the prior plan made with respect to members participating in plan F that is different than the rate of regular interest credited to contributions made with respect to members not participating in plan F, if necessary to effectuate that intent.

SEC. 2. Section 31580.2 of the Government Code is amended to read:

31580.2. In counties where the board of retirement and board of investment have appointed personnel pursuant to Section 31522.1, the respective boards shall annually adopt a budget covering the entire expense of administration of the retirement system which expense shall be charged against the earnings of the retirement fund. The expense incurred in any year shall not exceed eighteen-hundredths of 1 percent of the total assets of the retirement system. However, in any county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, until January 1, 1992, the expense incurred in that county in any intervening year shall not exceed eighteen-hundredths of 1 percent of the total assets of the retirement system provided, that any expense incurred in that county in any such intervening year which exceeds fifteen-hundredths of 1 percent shall be restricted to capital improvements and related services necessary to modernize and improve the system administration and, on and after January 1, 1992, the expense incurred in any county of the first class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, in any year shall not exceed fifteen-hundredths of 1 percent of the total assets of the retirement system.

The extra money made available by the amendments made to this section, in the 1989 portion of the 1989–90 Regular Session of the Legislature is needed for compliance with Section 415 of the Internal Revenue Code.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the

provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the election for the Los Angeles County Employees Retirement System to be bound by certain federal income tax limitations upon public retirement systems may be made in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 1301

An act to add Article 16 (commencing with Section 28110) to Chapter 5 of Division 12 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 1, 1989.]

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

SECTION 1. Article 16 (commencing with Section 28110) is added to Chapter 5 of Division 12 of the Vehicle Code, to read:

Article 16. Methanol or Ethanol Fueled Vehicles

28110. As used in this article, "antisiphoning device" means a device which prevents the removal by suction of fuel from a motor vehicle.

28111. Except as otherwise provided in Section 28112, any 1993 and later model-year vehicle which is capable of operating on methanol or ethanol and is imported into the state, or sold, purchased, leased, rented, or acquired in the state, shall be equipped with an antisiphoning device.

28112. Notwithstanding subdivision (a) of Section 28111, the State Air Resources Board may adopt regulations providing for exemptions from antisiphoning device requirements for categories of vehicles of 1993 and later model-years which it determines not susceptible to siphoning.

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

California Constitution.

CHAPTER 1302

An act to add and repeal Article 5 (commencing with Section 52760) to Chapter 11 of Part 28 of the Education Code, relating to education.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

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

(a) The quality of human life depends on maintaining a balanced interdependent ecosystem.

(b) Endangered species of plants and animals are becoming extinct faster than can be documented, at the estimated rate of one per day.

(c) If this trend continues into the next decade, many scientists warn that the rate of extinction may increase to one species per hour.

(d) It is important for citizens to be aware of the interdependence of all species and to work to avert further deterioration of these natural systems, thereby preserving the quality of life for this and future generations.

SEC. 2. The Legislature further finds and declares as follows:

(a) The most recent survey of the science knowledge of 9-, 13-, and 17-year olds conducted by the National Assessment of Education Progress concluded the following:

(1) Only 9 percent of 13-year olds and 41 percent of 17-year olds have the ability to analyze scientific procedures and information and to apply what they know to real life situations.

(2) By grade 11, almost half of the students decide not to take any more science courses, few spend time on science-related hobbies, and only about half believe that what they learn in science classes is useful in their everyday lives.

(3) Seventh and eleventh grade students who actively participate in challenging science activities are more likely to have a higher science proficiency than those who did not.

(b) Schools should provide students with "real world" experiences to increase their understanding of science, to develop critical thinking skills, and to engage them in addressing community and societal problems.

(c) Studying endangered species, particularly those in the local community, and developing stategies to protect those species gives students opportunities to acquire and apply scientific knowledge in ways that enrich local communities.

SEC. 3. Article 5 (commencing with Section 52760) is added to Chapter 11 of Part 28 of the Education Code, to read:

Article 5. The Endangered Species Education Project of 1989

52760. The Endangered Species Education Project of 1989 is hereby established to provide pupils in kindergarten and grades 1 to 8, inclusive, with opportunities to increase their understanding of science and their knowledge of the interdependence of living things, through the study of endangered species in local habitats. This project shall be administered by the Superintendent of Public Instruction and shall consist of a statewide competition in which each public elementary and junior high school in California is encouraged to (1) adopt one endangered species, as selected pursuant to Section 52761, from its locale; (2) design projects to educate its community about the threats to the adopted endangered species; and (3) develop a plan for local community action to preserve the adopted species' habitats. Exemplary projects shall be selected for special recognition by a panel of pupils pursuant to subdivision (b) of Section 52762.

52761. Each elementary or junior high school participating in the project shall submit to the superintendent a proposal to adopt one endangered species from the list established pursuant to Section 2070 of the Fish and Game Code. To the extent feasible, each school shall select a species based on the close proximity of the species, the feasibility of studying it, and the course of action that might occur to preserve it.

Each proposal shall include, but need not be limited to, the following:

(a) A description of the endangered species and the reasons the pupils selected that species.

(b) A description of strategies that the pupils plan to use to educate other pupils and members of the community regarding the threat to the adopted species. Strategies may include, but need not be limited to, exhibits, art work, media campaigns, oral presentations, drama, and writing projects.

(c) An action plan designed to monitor and promote the preservation of the adopted species and its habitat.

Pupils are encouraged to use appropriate local and state resources, including science faculty and students in postsecondary education institutions, to obtain information to assist them in the selection of their species and the development of their proposal.

52762. The Superintendent of Public Instruction shall do all of the following:

(a) Develop and distribute, to each school district and county office of education that operates an elementary or junior high school, the forms and guidelines necessary to submit a proposal as described in Section 52761. The guidelines shall include, but need not be limited to, the list of endangered species established pursuant to

Section 2070 of the Fish and Game Code, local and state resources that may be of assistance to participating pupils, and the criteria that will be used to select exemplary proposals for special recognition.

(b) Establish a panel of elementary school pupils to review and select exemplary proposals submitted by pupils from elementary schools and a panel of junior high school pupils to review and select exemplary proposals submitted by pupils from junior high schools. Each panel shall represent the geographical, racial, ethnic, gender, and socioeconomic diversity of the pupil population of this state.

(c) Develop and distribute certificates of commendation for pupil panel members, certificates of recognition for all schools that submit a proposal, and certificates of commendation for proposals that are selected as exemplary at each level. To the extent feasible, the superintendent shall, in addition, issue a press release to publicize the competition, make the exemplary proposals available for distribution to other public schools, and disseminate information about the Endangered Species Education Project of 1989 to appropriate science or environmental education organizations and publications.

52763. Operation of this article shall be subject to availability of funds from within local assistance appropriated in the annual budget acts for existing environmental education programs pursuant to Chapter 4 (commencing with Section 8700) of Part 6 of the Education Code.

52764. This article shall become inoperative on June 30, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 1303

An act to add Chapter 12.8 (commencing with Section 18986) to Part 6 of Division 9 of the Welfare and Institutions Code, relating to child welfare services

[Approved by Governor October 1, 1989 Filed with Secretary of State October 1, 1989]

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

SECTION 1. Chapter 12.8 (commencing with Section 18986) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 12.8. INTERAGENCY CHILDREN'S SERVICES ACT

Article 1. General Provision and Definitions

18986. This chapter shall be known and may be cited as the Presley-Brown Interagency Children's Services Act.

18986.1. The Legislature finds and declares all of the following:

(a) According to Policy Analysis of California Education (PACE):

(1) In 1988, California had a population of 7.4 million children; by the year 2000, the population of California's children will rise to 8.7 million, a 22-percent increase; California's share of children increased from one out of nine in the United States to one out of eight. By 1995, California school enrollment will equal the total enrollment of the 24 smallest states.

(2) (A) California's children are becoming more linguistically, culturally, and ethnically diverse. A majority of California's children are now minorities and the fastest growing are Hispanics and Asians.

(B) By the year 2000, 42 percent of the children in California will be Caucasian, 13 percent will be Asian, 36 percent will be Hispanic, and 9 percent will be Black.

(C) One-fourth of California school children speak a language other than English at home.

(3) The number of immigrant children in California is the largest of any state and that number is growing. California receives 27 percent of the nation's immigrants but has only 11 percent of the nation's population. The experience of immigrants from different cultures will vary and requires different public policies.

(4) Since 1980, the number of children in poverty in California has increased 50 percent and is now 23 percent above the national average. Poverty is associated with numerous problems, including low educational performance, poor nutrition, child abuse, and delinquency.

(5) There has been an alarming increase in extremely vulnerable children. Ten to 15 percent of infants born in public hospitals in large cities are drug-or alcohol-addicted. These children require intensive services and are overwhelming California's foster care capacity.

(6) There have been major changes from the past in female and teenage work behavior. The high percentage (54 percent) of children with both parents working means that the quality of child care is very important. By the year 2000, 60 percent of parents will work full time. Publicly supported child care, however, covers only 8 percent of the eligible low-income population. The growth in the number of teenagers working (about 45 percent work 16 hours or more a week) leaves less time for leisure activities or homework.

(b) There is no adequate comprehensive system for the delivery of services to children and youth; instead, services to children are provided by various departments and agencies at both the state and county levels, often without appropriate collaboration, resulting in gaps in services and program duplication.

(c) Too often, resources are not available to provide preventive services to children and families which would alleviate the need for a more costly response to a later crisis. The current service delivery system promotes intervention at the latest, most costly, and least

effective point. A greater focus on prevention rather than intervention maximizes the expenditure of state funds and results in the provision of more effective services to children.

(d) The facts and trends cited in this section require the state's major policies and institutions to engage in planning and coordinating services to meet the needs of the state's growing and changing population of children and to develop alternative ways of organizing and allocating resources for services.

18986.2. It is the intent of the Legislature, in enacting this chapter, to encourage the development of a comprehensive and collaborative delivery system of services to children and youths beginning at the local level and to offer fiscal incentives in the form of waivers to encourage collaboration. The goal of that collaborative system shall be to:

(a) Develop a service delivery plan which emphasizes preventive and early intervention services that maximize the healthy development of children and minimize the long-term need for public resources.

(b) Allow for flexibility of expenditures in public funds.

(c) Emphasize local decisionmaking and provide for greater flexibility to local government in designing delivery systems.

(d) Provide for a continuum of family-centered, child-focused services through public/private partnerships within the community.

(e) Minimize duplicate administrative systems.

(f) Identify gaps in services to target populations.

(g) Provide case management services to children and families with multiple needs.

18986.3. For purposes of this chapter, the following definitions shall apply:

(a) "Children's services" means any services provided by any state or local agency or private entity for the health, safety, or well-being of minors.

(b) "Council" means an interagency children's services coordinating council established pursuant to Section 18986.10.

Article 2. County Interagency Collaboration

18986.10. The board of supervisors of any county or city and county may establish an interagency children's services coordination council.

18986.11. A council shall be comprised of, but not limited to, the following members:

(a) Persons responsible for management of the following county functions:

(1) Alcohol and drug programs.

(2) Children's services.

(3) Housing and redevelopment.

(4) Mental health services.

(5) Probation.

(6) Public health services.

(7) Welfare or public social services.

(b) The presiding judge of the county's juvenile court.

(c) The superintendent of the county office of education and at least one superintendent of a unified school district within the county.

(d) A prosecuting attorney of the county or city and county.

(e) A representative of a private nonprofit corporation which has a goal of entering into a public private partnership with the county to meet the needs of children that are not adequately met by existing public or private funds.

(f) One member of the county board of supervisors.

(g) A representative of law enforcement.

(h) A representative of the local child abuse council.

(i) A representative of a local planning agency participating in the California Early Intervention Program pursuant to Subchapter VIII (commencing with Section 1471) of Chapter 33 of Title 20 of the United States Code.

18986.12. (a) The council shall convene monthly and shall, in addition, convene at least two public meetings annually inviting public testimony.

(b) Meetings of the council shall be convened by an executive director who is appointed by the county board of supervisors.

18986.13. The county board of supervisors may designate an existing, duly established interagency children's services coordinating body as the county's interagency children's services coordination council as authorized by Section 18986.10. However, the membership, responsibilities, and duties of that existing body shall be modified by the board as necessary to conform to the requirements of this chapter.

18986.14. The council's duties shall include, but not be limited to, the following:

(a) Ensuring collaboration and countywide planning for the provision of children's services.

(b) Identifying those agencies that have a significant joint responsibility in providing services to children and families.

(c) Identifying gaps in services to specific populations.

(d) Developing policies and setting priorities to ensure service effectiveness.

(e) Implementing public and private collaborative programs whenever possible.

(f) Providing for countywide interagency case management to coordinate resources, especially for those children and their families who are using the services of more than one agency concurrently.

(g) Identify, coordinate with, and, where feasible, integrate with existing children's services groups and other coordinating bodies.

18986.15. Each county wishing to participate under this chapter shall develop a three-year program for phasing in a coordinated children's services system.

(a) A plan for coordinated children's services may include proposals to combine and coordinate services to one or more of the following special populations of children provided by two or more existing local service agencies:

(1). Abused or neglected children and those at risk of abuse or neglect.

(2) Children in foster care or at risk of entering foster care.

(3) Children requiring mental health services.

(4) Children needing health care services delivered by local maternal and child health services, including, but not limited to, services provided under the California Children's Services Program, the Child Health and Disability Prevention Program, and perinatal services.

(5) Delinquent, status offender, and homeless minors.

(6) Minors in need of job training and placement services.

(7) School dropouts, or those at risk of dropping out.

(8) Infants born with identified drug dependencies and children with known histories of substance abuse.

(9) Children with developmental disabilities.

(b) Plans shall include all of the following:

(1) Use of existing service capabilities within the various agencies currently serving children's needs in the county.

(2) Interagency collaboration and program consolidation among publicly and privately funded agencies providing services to children.

(3) Appropriate interagency protocols and agreements.

(4) Services for the most vulnerable or at-risk children.

(5) Services which permit children to reside in their usual family setting whenever possible and in their best interest.

(6) Components designed to promote an effective case management system.

(7) Estimates of cost benefits and cost avoidance of the program proposal.

(8) A specific list of the benefits to children under the plan, including objective measures of successful outcome and program effectiveness.

(c) No later than July 1 of each year, beginning with July 1, 1990, any county that wishes to participate pursuant to this chapter shall submit to the county board of supervisors a program proposal for the development of a coordinated system of children's services.

Article 3. Waivers

18986.20. (a) Any county which wishes to participate under this chapter and which develops a three-year program of coordinated children's services pursuant to Section 18986.15, may, as a part of its plan, request a waiver of existing state regulations pertaining to single agency operations and auditing and accounting requirements which hinder coordination of children's services.

(b) Requests for waivers shall be submitted in writing, with a detailed description of the county's plan for coordinated children's services and a detailed description of the need for the waiver to the Secretary of the Health and Welfare Agency, the Superintendent of Public Instruction, and the Attorney General.

18986.21. (a) A waiver or waivers may be granted pursuant to this article when existing regulations hinder the coordination of children's services and when waivers would facilitate the implementation of this chapter.

(b) Any waiver granted pursuant to this article shall not reduce program standards, change or alter staffing requirements, or in any way conflict with statutory requirements existing at the time the waiver is granted or during the time the waiver is in effect.

(c) No waiver or waivers shall be granted pursuant to this article unless the department obtains any federal waivers required for federal financial participation in any program affected by the waiver or waivers authorized by this article.

18986.22. Waivers shall be granted pursuant to this article by the Secretary of the Health and Welfare Agency, the Superintendent of Public Instruction, or the Attorney General as follows:

(a) The Secretary of the Health and Welfare Agency shall grant waivers for programs under his or her jurisdiction, in consultation with the Superintendent of Public Instruction and the Attorney General.

(b) The Superintendent of Public Instruction shall grant waivers for programs under his or her jurisdiction, in consultation with the Attorney General and the Secretary of the Health and Welfare Agency.

(c) The Attorney General shall grant waivers for programs under his or her jurisdiction in consultation with the Superintendent of Public Instruction and the Secretary of the Health and Welfare Agency.

18986.23. The Secretary of the Health and Welfare Agency, the Superintendent of Public Instruction, or the Attorney General shall notify the appropriate policy committees and fiscal committees of the Legislature no later than 30 days before any waiver or waivers granted pursuant to this article take effect.

Article 4. Evaluation

18986.30. Beginning January 1, 1992, the Legislative Analyst shall review and report to the Legislature on the annual progress of the councils for which fiscal incentives and necessary waivers to establish the councils have been approved and granted. Programs to coordinate comprehensive children's services shall be deemed successful based upon the following:

(a) The county's ability to meet specific success criteria as specified in its overall plan.

(b) The county's ability to demonstrate cost avoidance which

equals or exceeds the cost of the plan. This cost avoidance shall include the following categories:

(1) Group home costs paid by Aid to Families with Dependent Children-Foster Care (AFDC-FC).

(2) Children and adolescent state hospital programs.

(3) Juvenile justice recidivism or reincarceration.

(4) Nonpublic school residential placement costs.

(5) Other short-term and long-term savings in public funds resulting from the plans.

(c) If the Legislative Analyst determines that the total cost avoidance listed in subdivision (b) does not equal or exceed the overall cost of the county's plan, the Legislative Analyst shall ascertain if the county has achieved substantial compliance with the following goals:

(1) A 20-percent reduction in court-ordered placements of juvenile court wards and dependents.

(2) A statistically significant reduction in juvenile justice recidivism rates.

(3) A 20-percent reduction in school dropout rates.

(4) A 20-percent reduction rate in out-of-county placements.

(5) Fifty percent of those children who are in eminent danger of out-of-home placement are allowed to remain at home for at least six months as a result of intensive in-home treatment programs

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CHAPTER 1304

An act to amend Section 290.2 of the Penal Code, relating to crimes, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. It is the intent of the Legislature that the amendments made to Section 290.2 of the Penal Code by this act shall not, in any way, affect the admissibility of DNA evidence at trial.

SEC. 1.5. Section 290.2 of the Penal Code is amended to read:

290.2. (a) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, or who is convicted of murder in violation of Section 190 or 190.05, or who is convicted of a felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5, and who is discharged or paroled from a state prison, county jail, or any institution under the jurisdiction of the Youth Authority where he or she was confined, or is granted probation, or is released from a state hospital to which he or she was committed as a mentally disordered

sex offender under the provisions of 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, the granting of probation or release, be required to provide two specimens of blood and a saliva sample to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing. The county shall make every effort to utilize one location for testing a person under this section.

The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist, or clinical laboratory bioanalyst may withdraw the blood specimens for purposes of this section.

(b) The Department of Justice shall provide all blood specimen vials, mailing tubes, labels, and instructions for the collection of the blood specimens and saliva samples. The specimens and samples shall thereafter be forwarded to the Department of Justice for analysis of deoxyribonucleic acid (DNA) and other genetic typing analysis at the department's DNA laboratory.

The Department of Justice shall perform DNA analysis and other genetic typing analysis only for law enforcement purposes.

(c) The Department of Justice DNA laboratory shall perform genetic typing only for those markers having value for law enforcement purposes.

For purposes of this subdivision, "marker" shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.

(d) The DNA and other genetic typing information shall be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in a computerized data bank system, and shall not be included in the state summary criminal history information.

The computerized data bank system shall be limited to containing information only on individuals convicted of crimes specified in subdivision (a), or evidence accumulated from crime scenes during ongoing investigations and believed to have been left by a person suspected of having committed a violent felony specified in subdivision (c) of Section 667.5 or an offense specified in Section 290. Evidence accumulated pursuant to this provision from any crime scene with respect to a particular person shall be stricken from the data bank when it is determined that the person is no longer a suspect in the case.

(e) The DNA and other genetic typing information shall be released only to law enforcement agencies and district attorneys' offices, at the request of the agency, except as specified in this section. Dissemination of this information to law enforcement agencies and district attorneys' offices outside the state shall be done in conformity with the provisions of this section.

(f) Any person who knowingly discloses DNA or other genetic

typing information developed pursuant to this section to unauthorized individuals or agencies, or for other than law enforcement purposes, shall be guilty of a misdemeanor.

(g) Furnishing DNA or other genetic typing information to defense counsel for criminal defense purposes in compliance with discovery is not a violation of this section.

(h) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file or the computerized data bank system, provided that the subject of the file is not identified and cannot be identified from the information disclosed It is also not a violation of this section to include information obtained from a file as follows: (1) in a transcript or record of a judicial proceeding, or (2) in any other public record when the inclusion of the information in the public record is authorized by a court, statute. or decisional law.

(i) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology.

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

SEC. 3. The sum of one million one hundred thousand dollars ($1,100,000) is hereby appropriated from the General Fund to the Department of Justice, in augmentation of Item 0820-001-001, Budget Act of 1989, for a DNA Identification Program and four regional DNA laboratories.

CHAPTER 1305

An act to add Sections 9359.01, 21200.01, and 75075.01 to, and to add and repeal Section 20123.5 of, the Government Code, relating to public retirement systems, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 9359.01 is added to the Government Code, to read:

9359.01. (a) Notwithstanding any other provision of this part, the benefits payable to any person who for the first time becomes a member on or after January 1, 1990, shall be sobject to the limitations set forth in Section 415 of the Internal Revenue Code.

(b) Notwithstanding any other law, the benefits payable to any person who became a member prior to January 1, 1990, shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:

(1) The limitations set forth in Section 415 of the Internal Revenue Code.

(2) The accrued benefit of a member under this system (determined without regard to any amendment to the system made after October 14, 1987).

SEC. 2. Section 20123.5 is added to the Government Code, to read:

20123.5. (a) It is the intent of the Legislature, in enacting this section, to ensure that each member of the Public Employees' Retirement System be provided a retirement benefit commensurate, to the extent deemed reasonable, with the services rendered without violating the intent and purposes of Section 415 of the Internal Revenue Code. However, time restraints prohibit a thorough analysis, by the end of the 1989 legislative year, of the retirement benefits which would be affected by the private sector limits contained in Section 415 of the Internal Revenue Code.

(b) The board shall, in cooperation with the Legislative Analyst, the Department of Personnel Administration, the public agencies which contract with the Public Employees' Retirement System, the counties which participate under the County Employees Retirement Law of 1937, and affected employee organizations, conduct a study to review the benefits under the Public Employees' Retirement Law and shall report to the Legislature by March 1, 1990, as to the impact that Section 415 of the Internal Revenue Code will have on the future membership of the system and also to recommend to the Legislature any changes in the benefits, including cost-of-living adjustments, that may be necessary to ensure that all future members receive benefits,

that, in total, will be as close as possible to the actuarial value of the benefits that the member would have been entitled to had the federal limits not been in place.

(c) It is the intent of the Legislature, in authorizing this study, that to the extent deemed reasonable, the cost to the employer for any recommended alternative benefit plans shall be equivalent to the cost of the benefits in effect prior to January 1, 1990.

(d) 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 chaptered before January 1, 1991, deletes or extends that date.

SEC. 3. Section 21200.01 is added to the Government Code, to read:

21200.01. (a) Notwithstanding any other provision of law, the retirement rights conferred by this part upon any person who for the first time becomes a member on or after January 1, 1990, shall be subject to, and such a person shall not have any retirement right or benefit which exceeds, and no retirement right or benefit under this part shall accrue to or vest in such a person which exceeds, the limitations in the Internal Revenue Code upon public retirement systems.

(b) The board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution, prior to employment, to each person who may become a member and to each person who for the first time becomes a member on or after January 1, 1990.

(c) It is the intent of the Legislature to enact legislation during the first plan-year of the Public Employees' Retirement System beginning after January 1, 1990, that would continue exemption of all members of the Public Employees' Retirement System who joined the system prior to January 1, 1990, from the Section 415 limits as permitted by the "grandfather" provision contained in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA; P.L. 100-647). This subdivision shall become inoperative on January 1, 1992.

SEC. 4. Section 75075.01 is added to the Government Code, to read:

75075.01. (a) Notwithstanding any other provision of this part, the benefits payable to any person who for the first time becomes a member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(b) Notwithstanding any other law, the benefits payable to any person who became a member prior to January 1, 1990, shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:

(1) The limitations set forth in Section 415 of the Internal Revenue Code.

(2) The accrued benefit of a member under this system (determined without regard to any amendment to the system made after October 14, 1987).

SEC. 5. There is hereby appropriated from the Public

Employees' Retirement Fund to the Board of Administration of the Public Employees' Retirement System the sum of one hundred thousand dollars ($100,000) for expenditure to carry out the purposes of Sections 2 and 3 of 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 that the research necessary to determine the nature and extent of the effects upon the benefits payable by the Public Employees' Retirement System may be commenced at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1306

An act to amend Section 48900 of, and to add Section 49079 to, the Education Code, and to amend Section 243.2 of, and to add Sections 241.6 and 243.6 to, the Penal Code, relating to violence.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Section 48900 of the Education Code is amended to read:

48900 A pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or

material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(*l*) Knowingly received stolen school property or private property.

No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring within a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts which are enumerated in this section and related to school activity or attendance which occur at any time, including, but not limited to, any of the following:

(1) While on school grounds

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.

SEC. 2. Section 49079 is added to the Education Code, to read:

49079. (a) A school district shall inform the teacher of every student who has caused, or who has attempted to cause, serious bodily injury or injury, as defined in paragraphs (5) and (6) of subdivision (e) of Section 243 of the Penal Code, to another person. The district shall provide the information to the teacher based on any written records that the district maintains or receives from a law enforcement agency regarding a student described in this section.

(b) No school district shall be liable for failure to comply with this section if, in a particular instance, it is demonstrated that the district has made a good faith effort to notify the teacher.

(c) The reporting period of the information required by this section shall commence in the 1990–91 school year. For that school year, the information described in subdivision (a) shall be from the previous school year. For the 1991–92 school year, the information provided shall be from the previous two school years. For the 1992–93 school year and each school year thereafter, the information provided shall be from the previous three school years.

(d) Any information received by a teacher pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher.

SEC. 3. Section 241.6 is added to the Penal Code, to read:

241.6. When an assault is committed against a school employee in retaliation for an act performed in the course of his or her duties, whether on or off campus, during the schoolday or at any other time, and the person committing the offense knows or reasonably should know the victim is a school employee, the assault is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both such fine and imprisonment.

For purposes of this section, "school employee" has the same meaning as defined in subdivision (d) of Section 245.5.

This section shall not apply to conduct arising during the course of an otherwise lawful labor dispute.

SEC. 4. Section 243.2 of the Penal Code is amended to read:

243.2 (a) Except as otherwise provided in Section 243.6, 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.

This section shall not apply to conduct arising during the course of an otherwise lawful labor dispute.

SEC. 4.5. Section 243.2 of the Penal Code is amended to read:

243.2. (a) Except as otherwise provided in Section 243.6, when a battery is committed on school property or park 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.

(c) "Park," as used in this section, means any publicly maintained or operated park. It does not include any facility when used for

professional sports or commercial events.

This section shall not apply to conduct arising during the course of an otherwise lawful labor dispute.

SEC. 5. Section 243.6 is added to the Penal Code, to read:

243.6. When a battery is committed against a school employee in retaliation for an act performed in the course of his or her duties, whether on or off campus, during the schoolday or at any other time, and the person committing the offense knows or reasonably should know that the victim is a school employee, the battery is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both such fine and imprisonment. However, if an injury is inflicted on the victim, the battery shall be punishable 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 imprisonment in the state prison for 16 months, or two or three years.

For purposes of this section, "school employee" has the same meaning as defined in subdivision (d) of Section 245.5.

This section shall not apply to conduct arising during the course of an otherwise lawful labor dispute.

SEC. 6. (a) On forms prepared and supplied by the State Department of Education, pursuant to Section 628.2 of the Penal Code, as modified by the department for purposes of this section, each school in a school district shall forward a completed report of pupil suspensions and expulsions at the end of each reporting period provided for in Section 628.2 of the Penal Code to the district superintendent of schools.

(b) The district superintendent of schools shall compile the school data, together with the aggregate data described in Section 628.2 of the Penal Code, and submit the aggregated data to the State Department of Education not later than the dates specified in Section 628.2 of the Penal Code.

(c) The State Department of Education shall submit to the Legislature a summary of the statewide aggregated data not later than March 1 of each year for the previous school year

This section shall remain operative only until March 2, 1992, and as of that date is repealed.

SEC. 6.5. Section 4.5 of this bill incorporates amendments to Section 243.2 of the Penal Code proposed by both this bill and SB 541. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 243.2 of the Penal Code, and (3) this bill is enacted after SB 541, in which case Section 4 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 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.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1307

An act to amend, repeal, and add Section 69509.5 of, to add and repeal Chapter 3 (commencing with Section 94300) of, to repeal Articles 1 (commencing with Section 94300), 1.5 (commencing with Section 94310, 2 (commencing with Section 94311), 3 (commencing with Section 94320), 4 (commencing with Section 94330), and 5 (commencing with Section 94350) of, and to repeal the heading of Chapter 3 (commencing with Section 94300) of Part 59 of, the Education Code, relating to private postsecondary institutions, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 69509.5 of the Education Code is amended 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 Loan Programs, 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 Code of Regulations, and as those sections may subsequently be amended, concerning the limitation, suspension, and termination of eligibility under the California Loan Programs.

(c) This section shall be repealed on December 31, 1990

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 Loan Programs, the director of the commission shall give notice, in writing, of the commencement of the action to the Council for Private Postsecondary and Vocational 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 Code of Regulations, and as those sections may subsequently be amended, concerning the limitation, suspension, and termination of eligibility under the California Loan Programs.

(c) The director of the commission, or his or her designee, shall give written notice to the Council for Private Postsecondary and Vocational Education when, in the administration of a program review concerning any private postsecondary or vocational educational institution's participation in the Cal Grant program or the California loan programs, evidence indicates that a private postsecondary or vocational educational institution is in violation of the standards adopted by its responsible accrediting agency or when it is in violation of Section 94311.5, 94312, or 94320.

(d) The director of the commission may develop selection criteria for the scheduled review of any private postsecondary or vocational educational institution.

(e) This section shall become operative on January 1, 1991.

SEC. 3. The heading of Chapter 3 (commencing with Section 94300) of Part 59 of the Education Code is repealed.

SEC. 3.1. Article 1 (commencing with Section 94300) of Chapter 3 of Part 59 of the Education Code is repealed.

SEC. 3.2. Article 1.5 (commencing with Section 94310) of Chapter 3 of Part 59 of the Education Code is repealed.

SEC. 3.3. Article 2 (commencing with Section 94311) of Chapter 3 of Part 59 of the Education Code is repealed.

SEC. 3.4. Article 3 (commencing with Section 94320) of Chapter 3 of Part 59 of the Education Code is repealed.

SEC. 3.5. Article 4 (commencing with Section 94330) of Chapter 3 of Part 59 of the Education Code is repealed.

SEC. 3.6. Article 5 (commencing with Section 94350) of Chapter 3 of Part 59 of the Education Code is repealed.

SEC. 4. Chapter 3 (commencing with Section 94300) is added to Part 59 of the Education Code, to read:

CHAPTER 3. PRIVATE POSTSECONDARY AND VOCATIONAL INSTITUTIONS

Article 1. General Provisions

94300. This chapter shall be known and may be cited as the "Private Postsecondary and Vocational Education Reform Act of

1989."

94301. It is the intent of the Legislature to promote the effective integration of private postsecondary education into all aspects of California's education system and to foster and improve the educational programs and services of these institutions while protecting the citizens of the state from fraudulent or substandard operations.

It is further the intention of the Legislature to recognize the enormous diversity of California's private postsecondary educational enterprise, with its approximately 3,000 privately supported institutions of academic and vocational education.

It is further the intent of the Legislature to provide for the protection, education, and welfare of citizens of California, its postsecondary educational institutions, and its students by providing for all of the following:

(a) Ensuring minimum standards of instructional quality and institutional stability for all students in all types of institutions, and thereby encourage the recognition by public and private institutions of completed coursework and degrees and diplomas issued by private institutions, to the end that students will be provided equal opportunities for equal accomplishment and ability.

(b) Establishing minimum standards concerning the quality of education, ethical and business practices, health and safety, and fiscal responsibility to provide protections against substandard, transient, unethical, deceptive, or fraudulent institutions and practices.

(c) Prohibiting the granting of false or misleading educational credentials.

(d) Prohibiting misleading literature, advertising, solicitation, or representations by private educational institutions or their agents.

(e) Recognizing the importance of providing adequate funding to support the state's activities in implementing this chapter.

(f) Protecting the consumer and students against fraud, misrepresentation, or other practices which may lead to an improper loss of funds paid for educational costs, whether financed through personal resources or state and federal student financial aid.

(g) Establishing a path for the development of institutions offering fields of study or methods of instruction not previously recognized in order to encourage them to become fully approved institutions.

(h) Recognizing and encouraging quality nongovernmental accreditation, while not ceding to that or any other nongovernmental process the responsibility for state oversight for purposes of approval if the accreditation process fails either to protect minimum standards of quality or to acknowledge legitimate innovative methods in postsecondary education.

(i) Establishing an administrative agency staffed by individuals who are knowledgeable about private academic and vocational education, and charged with the responsibility of developing policies and procedures for the oversight and approval of private

postsecondary and vocational education, including the responsibility for managing a broadly construed policy and planning process that seeks to improve state accountability for private postsecondary and vocational education as well as to improve the articulation of private postsecondary and vocational education with the general postsecondary and vocational educational community. It is the intent of the Legislature that current employees of the Private Postsecondary Education division of the State Department of Education shall be covered by Section 19050.9 of the Government Code during the establishment of the new administrative agency. This new body should provide the leadership and planning needed to maintain and develop a strong private sector of this community.

94302. As used in this chapter, unless the context requires otherwise:

(a) "Accredited" means that an institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education, or the Committee of Bar Examiners for the State of California. It shall not include those institutions that have applied for accreditation, or are identified by accrediting associations as candidates for accreditation or have provisional accreditation.

(b) "Agency" means a business entity established for the purpose of recruiting students for enrollment in a private postsecondary or vocational school, as defined in this chapter, and any other business entity engaged in that activity with the exception of the educational institution itself.

(c) "Agency approval" means a written document issued by the Council for Private Postsecondary and Vocational Education authorizing a business entity or an institution to engage in the recruitment of students for enrollment in private postsecondary and vocational institutions approved under this chapter.

(d) "Agent" means any person who, at a place away from the institution's premises or site of instruction, for consideration, solicits, promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to an institution either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in an institution. Administrators and faculty who make informational public appearances, but whose primary task does not include service as a paid recruiter, are exempted from this definition.

(e) "Agent's permit" means a nontransferable written document issued to an agent pursuant to the provisions of this chapter by the Council for Private Postsecondary and Vocational Education.

(f) "Applicant" means a new institution that has submitted an application but has not been evaluated by the council. An applicant institution shall not enroll students or offer educational services.

(g) "Approval" or "approval to operate" means that the council has determined and certified that an institution meets minimum standards established by the council for integrity, financial stability,

and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its program. It is the intent of the Legislature that the minimum standards for approval for degree granting institutions established by the council shall not exceed the accreditation standards adopted by the Western Association of Schools and Colleges.

(h) "Branch campus" means any campus, satellite facility, extension classroom, office, or location affiliated with an educational institution, other than the main campus or primary administrative location of the institution, in which students complete, while in residence, all or any part of a program of instruction.

(i) "Candidate" or "candidate for approval" means that a new college or university has been evaluated by the council and is found to comply with the council's minimum standards.

(j) "Certificate of authorization for service" means a written, nontransferable document issued by the council authorizing an individual to be an instructor or administrator in any private vocational educational institution in California which is approved under subdivision (a) of Section 94311.

(k) "Correspondence school" or "home study school" means any institution that provides correspondence lessons for study and completion by a student at a location separate from the institution, including those institutions which offer that instruction by correspondence in combination with in-residence instruction.

(*l*) "Council" means the Council for Private Postsecondary and Vocational Education established pursuant to Section 94304.

(m) "Degree" means any "academic degree" or "honorary degree" or title of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor, or fellow which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

(n) "Diploma" means any "diploma," "certificate," "transcript," "document," or other writing in any language other than a degree which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level.

(o) "Education," or "education services," or "educational program" includes, but is not limited to, any class, course, or programs of training, instruction, or study.

(p) "Institutional approval" means an institution that has been evaluated by the council and has been found to be in compliance with the council's standards.

(q) "Instruction" includes any specific, formal arrangement by an institution or its enrollees to participate in learning experiences in

which the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(r) "Out-of-state school" means any private postsecondary or vocational educational institution offering career or job training programs, including both an in-residence institution and a home study institution which has its place of instruction or its principal location outside the boundaries of the state, or which offers or conducts courses of instruction or subjects on premises maintained by the school outside the boundaries of the state, or which provides correspondence or home study lesson materials from a location outside the boundaries of this state, or which evaluates completed lesson materials or otherwise conducts its evaluation service from a location outside the boundaries of this state, or which otherwise offers or provides California students with courses of instruction or subjects through activities engaged in or conducted outside the boundaries of the state.

(s) "Private postsecondary educational institution" or "institution" means any person, firm, association, partnership, or corporation doing business in California by offering to the public for a tuition, fee, or other charge, instructional or educational services or training in any academic, technical, professional, mechanical, business, or industrial occupation, either in the recipient's home, at a designated location, or by mail.

(t) "Private vocational educational institution" means any person, firm, association, partnership, or corporation doing business in California by offering to the public, for a tuition fee, or other charge, career or job training programs in any technical, professional, mechanical, business, or industrial occupation, and issuing diplomas or certificates to individuals who complete that program. The following are not considered to be private postsecondary or vocational educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade

(2) Education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church or religious denomination if the education is limited to instructions in the principles of that church or denomination and no degree is awarded by the institution as a product of that institution.

(u) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person,

directly or indirectly, in any form, to perform the act described.

(v) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, or from or through which, educational services are offered or educational degrees or diplomas are offered or granted.

94303. Articles 1.5 and 2 of this chapter, subdivision (c) of Section 94320, and Sections 94322, 94330, 94330.5, 94331, 94331.5, 94334, 94338, 94342, 94343, 94343.2, and 94343.5 shall not apply to institutions which are accredited by the Western Association of Schools and Colleges and are either (1) incorporated and lawfully operate as nonprofit public benefit corporations pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and are not managed or administered by any entity for profit, or (2) exclusively confer degrees upon the completion of a course of study of two or more years. Within 30 days of any action by the Western Association of Schools and Colleges which establishes, reaffirms, or publicly sanctions the accreditation of a private institution operating in the state, the association shall notify the council of that action, and provide a copy of any public statements regarding the reasons for sanctions.

Article 1.5. Administration

94304. (a) There is hereby established in state government a Council for Private Postsecondary and Vocational Education whose members shall be appointed no later than July 1, 1990. Commencing January 1, 1991, the council shall have the responsibility for approving and regulating private postsecondary and vocational educational institutions and for developing state policies for private postsecondary and vocational education in California. The council shall represent the private postsecondary and private vocational educational institutions in all state level planning and policy discussions about postsecondary and vocational education, and shall have as its objective the development of a strong, vigorous, and widely respected sector of private postsecondary and vocational education.

(b) The council shall be composed of 15 voting members, including the following representatives.

(1) Two representatives from private degree granting institutions approved under Section 94310.

(2) Two representatives from vocational institutions approved under Section 94311.

(3) Two representatives from accredited private postsecondary institutions operating in California, one from an out-of-state accredited degree-granting postsecondary educational institution, and one from an accredited vocational institution.

(4) A representative of the California Student Aid Commission, nominated by the executive director of the commission, and appointed by the Governor.

(5) The Superintendent of Public Instruction, or his or her designee.

(6) The Secretary of State and Consumer Services, or his or her designee.

(7) Six members of the general public.

(8) The appointment process for the council shall be as follows:

(A) The Governor shall appoint one representative from an institution approved under Section 94310, one representative from a vocational institution approved under Section 94311, one representative from an accredited vocational school, and three members from the general public.

(B) The Senate Rules Committee shall appoint one representative from an institution approved under Section 94310, one representative from an out-of-state accredited degree granting college or university operating in California, and one member of the general public.

(C) The Speaker of the Assembly shall appoint one representative from a vocational institution approved under Section 94311, and two members of the general public.

(D) The institutional representatives shall be appointed from a list or lists of persons nominated by private postsecondary or vocational educational institutions.

(9) In addition, the following shall serve as nonvoting ex officio members of the council:

(A) The Attorney General of the State of California, or his or her designee.

(B) The Director of the Department of Employment Development, or his or her designee.

(C) The Director of the California Postsecondary Education Commission, or his or her designee.

(D) The Director of the Youth, Adult, and Alternative Educational Services Division of the State Department of Education, or his or her designee.

(E) The Chancellor of the California Community Colleges, or his or her designee.

The members shall each serve a four-year term, and no members shall serve more than two full terms.

No person who is employed by an institution of public or private postsecondary or vocational education shall be appointed to or serve on the council as a member of the general public.

It is the intent of the Legislature that the members of the general public appointed to the council have a strong interest in developing private postsecondary and vocational education, and include representation from businesses that employ persons in positions requiring academic, vocational, or technical education.

(c) It is the intent of the Legislature that the council shall be broadly and equitably representative of the general public and that it include adequate representation on the basis of gender and on the basis of the significant racial, ethnic, and economic groups in the

state. No person appointed pursuant to this section shall, with respect to any matter before the council, vote for or on behalf of, or in any way exercise the vote of, any other member of the council.

(d) The council shall meet as often as it deems necessary to carry out its duties and responsibilities. Any member of the council who in any calendar year misses more than one-third of the meetings of the full council forfeits his or her office, thereby creating a vacancy.

(e) The council shall select a chair from among the members representing the general public. The chair shall hold office for a term of two years

(f) The council may appoint any subcommittees or advisory committees it deems necessary to advise the council on matters of educational policy. The council shall appoint and may remove a director in the manner prescribed in this section. The director shall appoint persons to any civil service staff positions authorized by the council. The staffing shall include individuals with responsibilities for each of the following areas:

(1) The approval of vocational institutions.

(2) The approval of degree granting institutions.

(3) The approval of courses offered to veterans by vocational and degree granting institutions. For the purposes of implementing the requirements of this paragraph, the council is hereby designated as the state agency responsible for the administration of veteran educational benefit programs.

(4) Institutional relations to develop strong relationships with agencies such as the State Department of Education, the California Postsecondary Education Commission, the Student Aid Commission, the Department of Consumer Affairs, and nongovernmental accrediting associations.

(5) Legislative and public affairs.

(6) Staff administrative services.

(g) It is the intent of the Legislature that the council's approval and regulating responsibilities be funded solely through approval fees and federal funding provided to implement the approval process for courses offered to veterans by vocational and degree granting institutions. All fees derived from postsecondary degree granting institutions and their veterans' educational benefits shall be deposited in a special degree granting institution account, which is hereby created, in the Private Postsecondary and Vocational Education Administration Fund. All fees derived from vocational education institutions and their veterans' educational benefits shall be deposited into a special vocational education account, which is hereby created, in the Private Postsecondary and Vocational Education Administration Fund. The council shall establish an accounting procedure to allocate the time required to approve all degree granting institutions and all vocational education institutions and shall charge these accounts accordingly. Any general administrative expenses shall be allocated on a pro rata basis.

(h) The council shall prescribe rules for the transaction of its own

affairs, subject to all the following requirements and limitations:

(1) The votes of all representatives shall be recorded.

(2) Effective action shall require the affirmative vote of a majority of all the duly appointed members of the council, not including vacant council seats.

(3) The affirmative votes of two-thirds of all the duly appointed members of the council, not including vacant council seats, shall be necessary for the appointment or removal of the director.

(i) There is hereby established an advisory committee to the council and the director, consisting of representatives of the Board of Cosmetology, the Board of Barber Examiners, the Board of Vocational Nurse and Psychiatric Technician Examiners, the Board of Behavioral Science Examiners, and other state agencies responsible for monitoring private postsecondary institutions. Meeting agenda items and associated documents of the council shall be provided to the advisory committee in a timely manner.

94304.5. The council shall appoint from its membership one subcommittee on postsecondary degree granting institutions and one subcommittee on vocational education. All educational institutions which confer degrees shall be considered by the subcommittee on postsecondary degree granting institutions pursuant to the requirements of Section 94310. All educational institutions which offer vocational education and which do not confer degrees shall be considered by the subcommittee on vocational education pursuant to the requirements of Section 94311. Each subcommittee shall report its recommendations to the council, which shall make the final approval determination.

94305. The council shall have the following functions and responsibilities in its capacity as the statewide private postsecondary and vocational educational planning and licensing agency:

(a) The establishment of policies for the administration of this chapter.

(b) The establishment of minimum criteria for the approval of private postsecondary or vocational educational institutions to operate in California and award degrees and diplomas, and for the approval of institutions which meet the criteria.

(c) The establishment of a process for the development and adoption of rules and regulations. The process developed shall not be inconsistent with this chapter and shall allow for the input of consumers and private postsecondary and vocational educational institutions.

(d) The adoption of rules and regulations governing the conduct of institutions under this chapter, including, but not limited to, minimum state standards for refund policies, advertising, enrollment agreements and contracts, consumer information, attendance policies, and financial responsibility.

(e) The adoption of procedures necessary or appropriate for the conduct of its work and the implementation of this chapter consistent with its adopted rules and regulations.

(f) The representation of California's segment of private postsecondary and vocational education in all state level discussions and planning for postsecondary and vocational education, including, but not limited to, representation on the California Postsecondary Education Commission, and the commission's advisory committee, and voluntary postsecondary or vocational organizations.

(g) The publication biennially for public distribution of a directory of all private postsecondary and vocational educational institutions approved to operate in California under this chapter.

(h) The preparation annually of a proposed budget for the support of activities under this chapter and to secure appropriate funding necessary for the effective implementation of this chapter.

(i) Conducting research and planning for private postsecondary and vocational education, including the compilation of important institutional, faculty, and student data.

(j) The impaneling of special committees of technically qualified persons to assist the council in the development of standards for education and educational institutions and the evaluation of any application or institutions pursuant to this chapter. The members of the special committees shall receive no compensation but shall be reimbursed for their actual expenses for attendance at official meetings and actual expenses when on official council business.

94306. (a) The initial appointments to the council shall be made in the following manner:

(1) The Governor shall appoint two members for a two-year term, two members for a three-year term, and two members for a four-year term. The representative of the California Student Aid Commission shall be appointed for a four-year term.

(2) The Senate Rules Committee shall appoint one member for a two-year term, one member for a three-year term, and one member for a four-year term.

(3) The Speaker of the Assembly shall appoint one member for a two-year term, one member for a three-year term, and one member for a four-year term.

(b) All initial appointments to the council shall become effective on July 1, 1990. All subsequent terms shall begin on January 1 of the year in which the respective terms are to commence.

(c) The Advisory Council for Private Postsecondary Educational Institutions shall be continued in existence until June 30, 1990, in order to provide communication with institutions approved under this chapter, to provide leadership in the transition of authority from the State Department of Education to the council, and to present recommendations to the council and to the California Postsecondary Education Commission for implementation of the requirements of this chapter. The executive committee of the advisory council shall present its advice and recommendations to the council at its initial meeting in July 1990, and shall serve in a resource capacity to the council during the next three-month period.

(d) The Executive Director of the California Postsecondary

Education Commission shall call and chair the initial meeting of the council in July 1990, and shall serve as the chair until the council selects a chairperson. The council shall adopt procedures for the recruitment and appointment of a director and staff. On January 1, 1991, the council shall succeed to the powers, duties, and functions vested in the Superintendent of Public Instruction for the approval and monitoring of private postsecondary and vocational educational institutions. Commencing July 1, 1990, all expenses associated with the operation of the council shall be charged to and paid for from the Private Postsecondary Education Administration Fund.

(e) All responsibilities previously assigned to the Superintendent of Public Instruction for the approval and monitoring of private postsecondary and vocational education pursuant to statutes, legislative resolutions, and budget language shall be assumed by the council commencing January 1, 1991. On that date the Private Postsecondary Education Administration Fund, the Student Tuition Recovery Fund, and all ongoing projects, information, and files maintained by the Superintendent of Public Instruction and the State Department of Education shall be transferred to the council. The Private Postsecondary Education Administration Fund shall be renamed the Private Postsecondary and Vocational Education Administration Fund. All state civil service employees who were employed on December 31, 1990, to carry out the functions transferred to the council from the Private Postsecondary Education Division of the State Department of Education, shall be transferred to the council on January 1, 1991. No appointments shall be made to the Private Postsecondary Education Division between December 31, 1989, and December 31, 1990, without the approval of either the Advisory Council for Private Postsecondary Educational Institutions or the Council for Private Postsecondary and Vocational Education.

Article 2. Requirements and Standards

94310. No institution may issue, confer, or award an academic or honorary degree unless the institution meets the requirements of subdivision (a) or (i), as follows:

(a) The institution is approved by the Council for Private Postsecondary and Vocational Education to operate in California and award degrees. The council shall not approve an institution to issue degrees, diplomas, or certificates pursuant to this paragraph until it has conducted a qualitative review and assessment of, and has approved, each degree program offered by the institution, and all of the operations of the institution, and has determined all of the following:

(1) The institution has the facilities, financial resources, administrative capabilities, faculty, and other necessary educational expertise and resources to ensure its capability of fulfilling the program or programs for enrolled students.

(2) The faculty is fully qualified to undertake the level of

instruction that they are assigned and shall possess appropriate degrees and have demonstrated professional achievement in the major field or fields offered, in sufficient numbers to provide the educational services.

(3) The education services and curriculum clearly relate to the objectives of the proposed program or programs and offers students the opportunity for a quality education.

(4) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(5) The course of study for which the degree is granted provides the curriculum necessary to achieve its professed or claimed academic objective for higher education, and the institution requires a level of academic achievement appropriate to that degree.

(6) The institution provides adequate student advisement services, academic planning and curriculum development activities, research supervision for students enrolled in Ph.D. programs, and clinical supervision for students enrolled in various health profession programs.

(7) If the institution offers credit for prior experiential learning it may do so only after an evaluation by qualified faculty and only in disciplines within the institution's curricular offerings that are appropriate to the degree to be pursued. The council shall develop specific standards regarding the criteria for awarding credit for prior experiential learning at the graduate level, including the maximum number of hours for which credit may be awarded.

(b) The approval process shall include a qualitative review and assessment of all of the following:

(1) Institutional purpose, mission, and objectives.
(2) Governance and administration.
(3) Curriculum.
(4) Instruction.
(5) Faculty, including their qualifications.
(6) Physical facilities.
(7) Administrative personnel.
(8) Procedures for keeping educational records.
(9) Tuition, fee, and refund schedules.
(10) Admissions standards.
(11) Financial aid policies and practices.
(12) Scholastic regulations and graduation requirements.
(13) Ethical principles and practices.
(14) Library and other learning resources.
(15) Student activities and services.
(16) Degrees offered.

The standards and procedures utilized by the council shall foster the development of high quality, innovative educational programs and emerging new fields of study within postsecondary education.

(c) The council may, at its discretion, delegate the responsibilities for regulation and oversight of accredited degree granting law

schools to the California Committee of Bar Examiners, and that accreditation may be accepted by the council in lieu of state approval.

(d) (1) The council shall conduct a qualitative review and assessment of the institution and all programs offered, including the items listed in subdivision (b), through a comprehensive onsite review process, performed by a qualified visiting committee impaneled by the council for that purpose. Each institution shall submit a single application for all operations in California, and the application shall include a single fee which is institution-based and not site-based. The visiting committee shall be impaneled by the council within 90 days of the date of the receipt of a completed application and shall be composed of educators, and other individuals with expertise in the areas listed in subdivision (b), from established institutions within the state. Within 90 days of the receipt of the visiting committee's evaluation report and recommendations, the council shall take one of the following actions:

(A) Grant an approval to operate for a period not to exceed five years.

(B) Grant candidate for approval status for a period not to exceed two years plus the remainder of the calendar year in which the application was made. Candidate status may not be renewed, and shall be granted only to new institutions, or to institutions changing to operating under the provisions of Section 94310, after operating under the provisions of Section 94311. All new institutions shall operate initially as candidates for approval.

(C) Disapprove the application.

(2) When evaluating an institution whose purpose is to advance postsecondary education through innovative methods, the visiting committee shall comprise educators who are familiar with and receptive to evidence bearing on the educational quality and accomplishments of those methods.

(3) The standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.

(e) If at any time the council determines that an institution has deviated from the standards for approval, the council may, after identifying for the institution the areas in which it has deviated from the standards, and after giving the institution due notice and an opportunity to be heard, place the institution on probation for a prescribed period of time, not to exceed 12 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total compliance. If, at the end of the probationary period, the institution has not taken steps to eliminate the cause or causes for its probation to the satisfaction of the council, the council may revoke the institution's approval to award degrees and provide notice to the institution to cease its operations.

(f) An institution may not advertise itself as an approved institution unless each degree program offered by the institution has been approved in accordance with the requirements of this section. The council shall review all operations of the institution, both within and outside of California. The council may authorize any institution approved to issue degrees under this section to issue diplomas for the completion of courses of study that are within the institution's approved degree granting programs. However, if the preponderance of the institution's enrollments are in vocational programs leading to a diploma, rather than a degree, the institutions shall comply with the requirements of Section 94311, rather than Section 94310.

(g) All institutions operating on December 31, 1990, pursuant to licensure received under subdivision (a) of Section 94310.1 or approval received under Section 94310.2, shall receive approval for a period not to exceed four years from the date of the institution's last approval review. On a specified date prior to June 30, 1995, to be determined by the council, each institution granted approval pursuant to this subdivision shall file a completed application for reapproval pursuant to this section.

(h) All institutions operating pursuant to authorization received under Section 94310.3 or 94310.4, as in effect on December 31, 1990, shall receive candidate for approval status for a period not to exceed three years from the date of the institution's last authorization review. On a specified date prior to June 30, 1994, to be determined by the council, each institution granted candidate for approval status pursuant to this subdivision shall file a completed application for approval pursuant to this section.

(i) Any public or private postsecondary educational institution incorporated in another state that has accreditation from a regional accrediting association recognized by the United States Department of Education at the time of the issuance of a degree, and that is approved by the council, may issue degrees, diplomas, or certificates. Accredited public or private postsecondary educational institutions incorporated in another state shall not offer degrees, diplomas, or certificates in California unless they comply with the provisions of this subdivision.

(1) The council shall not approve an institution to issue degrees, diplomas, or certificates pursuant to this subdivision until the council has conducted a qualitative review and assessment of and has approved, the operations of the institution in California, and the council has determined that the institution meets the following standards:

(A) The institution has financial resources to ensure the capability of fulfilling the program or programs for enrolled students.

(B) The faculty includes personnel who possess appropriate degrees from institutions accredited by a regional accrediting association recognized by the United States Department of Education in the degree major field or fields offered, in sufficient

number to provide the educational services.

(C) The education services and curriculum clearly relate to the objectives of the proposed program or programs.

(D) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.

(E) The institution has verifiable evidence of academic achievement comparable to that required of graduates of other institutions operating in this state for the program or programs upon which the degree, diploma, or certificate is based.

(2) The council shall grant approved status under this subdivision for a period consistent with the postsecondary educational institution's regional accrediting association, but not to exceed five years.

(3) Institutions approved under this subdivision shall offer in California only programs that the institution can document to have been acknowledged and favorably reviewed by the home regional accrediting association.

(4) In reviewing the out-of-state accredited institutions, the council shall use as guidelines the standards and procedures developed by the special committee created pursuant to paragraph (5) of subdivision (b) of Section 94310.1, as in effect on December 31, 1989, and adopted by the California Postsecondary Education Commission. These standards and procedures were based on the following principles:

(A) Following the initial state review, subsequent onsite reviews by the council may be conducted in conjunction with institutional reviews by the regional accrediting association. However, if there is substantial evidence that the institution is not in compliance with state standards, the council may initiate a special review of the California operations of the institution.

(B) Each institution shall submit a single application for all operations in California, and the application shall include a single fee which is institution-based and not site-based.

(C) The council shall develop a procedural rationale to justify the number of sites to be visited by the state in the review of the institution's operations in California

(D) The purpose of the onsite review by the council shall be to determine that operations by the institution in California meet the minimum state standards identified in statute.

(E) The standards and procedures shall not unreasonably hinder educational innovation and competition.

(5) The regulations used by the council to implement this chapter shall provide for consideration of the accredited institutions' stated educational goals, purposes, and objectives, in conducting the approval review of the California operations of out-of-state based institutions.

(A) These regulations shall include a formula to determine the institutional approval fee and the number of sites to be visited by the

state.

(B) The regulations developed by the council shall be based on the procedures and standards recommended by the special committee and acted upon by the commission. In conducting the approval review of the operation of out-of-state accredited institutions in California, the council shall interpret the regulations based upon each institution's accredited educational purposes and objectives.

(6) All institutions operating under subdivision (b) of Section 94310.1, as it read on December 31, 1990, shall receive approval for a period not to exceed five years from the date of the institution's last review by the state. On a date to be specified by the council on or before June 30, 1995, each institution granted approval under this subdivision shall file a completed application for reapproval under this section.

94311. No private vocational educational institution may offer career or job training programs, or offer, confer, or award a diploma, unless the institution, or the branch or satellite campus, has been approved by the council as meeting the requirements of subdivision (a):

(a) The institution is approved by the Council for Private Postsecondary and Vocational Education to operate in California and to offer vocational or technical programs and award a diploma or certificate. The council shall not approve an institution, or the branch campus of an institution, to issue diplomas or certificates pursuant to this subdivision until it has conducted a qualitative review and assessment of the operations of the institution in California, and determined all of the following:

(1) The quality and content of each course or program of instruction, training, or study may reasonably and adequately be expected to achieve the stated objective for which the course or program is offered.

(2) There is in the institution adequate space, equipment, instructional material, and instructor personnel to provide training of the quality needed to attain the object of that particular course.

(3) Every instructor and administrator holds an applicable and valid Certificate of Authorization for Service issued by the council in the specified competence area in which the individual will serve. Certificates may be issued to administrators and to instructors upon the council's determination that the applicant possesses adequate academic, experiential, and professional qualifications, and that grounds for denying the issuance of the certificate, as provided in Section 480 of the Business and Professions Code, do not exist. The council shall not issue a certificate to any instructor or member of the administrative staff who has been convicted of, or who has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of federal or state funds, or who has been judicially or administratively determined to have committed fraud involving state or federal funds.

(4) The institution maintains written records of the student's previous education and training, where applicable.

(5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to tardiness, absence, grading policy and rules of operation and conduct is given to students prior to enrollment.

(6) The institution maintains and enforces adequate standards relating to attendance, satisfactory academic progress, and student performance.

(7) The institution complies with all local city, county, municipal, state, and federal regulations relative to the safety and health of all persons upon the premises such as fire, building, and sanitation codes. The council may require evidence of compliance.

(8) The institution does not exceed enrollment which the facilities and equipment of the institution can reasonably handle.

(9) The institution's administrators and instructors possess the professional qualifications necessary to comply with this chapter, and the institution's officers, directors, and owners demonstrate financial and fiduciary responsibility, as prescribed by statute, or by regulations adopted by the council.

(10) The institution is in compliance with this chapter and has developed policies and procedures designed to ensure that compliance

(11) Application for approval shall be made in writing on forms prescribed by the council.

(b) Within 90 days following the receipt of the institution's application, and prior to the issuance of an approval, a representative of the council shall personally inspect the institution and verify the institution's compliance with the standards prescribed by this chapter. Within 90 days following visitation, the council shall take one of the following actions:

(1) Grant approval for a period not to exceed three years.

(2) Grant candidate for approval status for a period not to exceed two years plus the remainder of the calendar year in which the application was made. Candidate status may not be reviewed, and shall only be granted to new institutions.

(3) Disapprove the application.

(c) All institutions operating in California on December 31, 1989, pursuant to the prior authority of subdivision (c) of former Section 94311, and which continued to operate under the requirements of this chapter on the operative date of this section, shall receive an approval status for a period not to exceed three years. On a specified date to be determined by the council on or before June 30, 1993, each institution granted an approval pursuant to this subdivision shall file a completed application for reapproval pursuant to this section. It is the intent of the Legislature that all institutions having a cumulative gross student loan default rate higher than 40 percent, as determined by the Student Aid Commission, shall be reviewed by the council on or before February 29, 1992, to determine if these institutions are in

compliance with the requirements of this chapter, and should be continued to be approved to offer educational programs in California. On or before March 15, 1992, the council shall report to the education policy and fiscal committees of the Legislature on the results of this review.

All institutions operating in California on December 31, 1990, pursuant to prior authority of subdivision (a) or (b) of former Section 94311, shall receive approval from the council for a period not to exceed three years. On or before June 30, 1994, the council shall work in cooperation with the appropriate state boards or agencies, and with the Federal Aviation Administration, to review each of these institutions to determine whether the institution is in compliance with the requirements of this chapter. It is the intent of the Legislature that the council develop a memorandum of understanding with each of the appropriate state boards or agencies and with the Federal Aviation Administration to delineate the responsibilities of each agency the approval and monitoring of these private vocational institutions that were operating on December 31, 1990, under the prior authority of subdivisions (a) and (b) of former Section 94311. It is further the intent of the Legislature that these memorandums of understanding be introduced as legislation on or before February 1, 1994, for enactment as amendments to this act. It is the intent of the Legislature that all institutions having a cumulative gross student loan default rate above 40 percent, as determined by the Student Aid Commission, shall be reviewed by the state board and the council on or before February 29, 1992, to determine if these institutions are in compliance with the requirements of this chapter and should continue to be approved to offer educational programs in California.

All institutions operating in California on December 31, 1990, pursuant to the prior authority of subdivision (d) of former Section 94311, shall receive an approval for a period not to exceed three years. On a specified date to be determined by the council on or before December 31, 1993, each institution granted an approval pursuant to this subdivision, shall file a completed application for reapproval pursuant to this section.

(d) The council may, at its discretion, delegate all or a portion of its responsibilities for the regulation and oversight of nondegree granting vocational institutions to a state board in the Department of Consumer Affairs, to the Federal Aviation Administration, or to the state agency responsible for administering Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code. Nothing in this section shall modify the existing authority of regulatory agencies with the Department of Consumer Affairs relating to schools or programs.

The council shall delegate its responsibilities only when the state board or state agency can demonstrate that its standards and procedures for the review of institutions encompass the standards and consumer protection requirements prescribed by this chapter

and that these standards and procedures are rigorously enforced.

(e) If at any time the council determines that an institution has deviated from the standards for approval, the council may, after giving the institution due notice and an opportunity to be heard, place the institution on probation for a specified period of time not to exceed 12 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total compliance. If at the end of the specified probationary period the institution has not taken steps to eliminate the causes for its probation to the satisfaction of the council, the council may revoke the institution's approval and provide notice to the institution to cease its operations.

94311.2. (a) No vocational school shall establish a branch campus in California, or offer any program of instruction, whether in residence or by correspondence, to any student at any location in the state unless the institution is in compliance with the requirements of this chapter and has been approved by the council pursuant to the minimum state requirements for approval.

(b) The council shall not approve an institution until there has been an onsite review which determines that the institution meets, at a minimum, the requirements of subdivision (a) of Section 94311.

(c) Prior to granting candidate for approval status to an out-of-state vocational school, the council shall conduct an onsite review of the institution to determine that there are adequate facilities, resources, and administrative procedures to comply with the minimum standards prescribed by Section 94312.

(d) Any out-of-state private vocational school, any agent of an out-of-state school, or any paid recruiter representing an out-of-state school shall promote or offer nondegree-granting vocational programs in California only after receiving a certificate of approval from the council under Section 94333 or 94334. Each out-of-state institution shall provide evidence of a license to operate from the appropriate regulatory agency in the state in which it is incorporated.

94311.4. The council may utilize the resources of accrediting associations in gathering information about accredited postsecondary and vocational institutions, including participating as an observer on accreditation site visits. However, this does not preclude or relieve the council of its responsibilities under the provisions of this chapter and the council shall retain full authority for approving all private postsecondary and vocational institutions operating in California.

94311.5. (a) The review of a private postsecondary or vocational educational institution's original application for approval, or a renewal application to the council, or an approved institution already in operation, shall include a determination of the institution's

financial responsibility. An institution shall be considered financially responsible if it has sufficient assets for all of the following:

(1) To provide the educational services stated in its official publications and statements.

(2) To comply with the standards and requirements specified in Sections 94310 and 94311.

(3) To provide the administrative and financial resources to fully comply with Section 94312.

(b) An institution shall not be considered financially responsible under any of the following conditions:

(1) The institution, under generally accepted accounting principles, has had operating losses in, at a minimum, the two most recent years or had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs, for purposes of this section, when the institution's liabilities exceed its assets.

(2) Under generally accepted accounting principles, the institution had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1.25 to 1.

(3) Under a fund accounting system, the institution's unrestricted current or operating fund reflects sustained material deficits over at least its two most recent fiscal years.

(4) The institution is not in compliance either with the regulations adopted by the council or with any existing statutes relating to the requirements for maintaining sufficient funds to cover all operating expenses.

(c) If the council determines that an institution is not financially responsible, the council may, under terms and conditions prescribed by the council, require the institution to submit for its latest complete fiscal year and its current fiscal year, each of the following:

(1) A financial audit of the institution conducted by a licensed certified public accountant, in accordance with generally accepted auditing standards

(2) The institution's financial plan for establishing financial responsibility.

(3) Any other information requested by the council.

This subdivision shall not prevent the council from taking any other actions authorized under this chapter.

94312. All institutions approved under this chapter shall be maintained and operated, or in the case of a new institution, shall demonstrate that it will be maintained and operated, in compliance with all of the following minimum standards:

(a) That the institution is financially capable of fulfilling its commitments to its students.

(b) That the institution and its agents do not utilize advertising of any type which is false or misleading, either by actual statement, omission, or intimation.

(c) That the institution designates an agent for service of process within this state.

(d) That the institution has and maintains a fair and equitable

policy for the refund of the unused portion of tuition fees and other charges in the event the student does not register for the period of attendance or withdraws therefrom at any time prior to completion of the courses, or otherwise fails to complete the period of enrollment. The institutional refund shall be defined as the amount paid for institutional charges for the term of instruction by financial aid or cash payments, minus the amount retained by the school for the portion of the term of instruction that the student attended classes, subject to the following provisions:

(1) The institution shall, without penalty or obligation, refund 100 percent of the amount paid for institutional charges, less a reasonable deposit or application fee not to exceed one hundred dollars ($100), if notice of cancellation is made prior to or on the first day of instruction. The institution shall advise each student that any notification of withdrawal or cancellation and any requests for a refund must be made in writing.

(2) The institution shall provide a written statement containing its refund policy, together with examples of the application of the policy, to each student prior to signing the enrollment contract, and shall make its policy known to currently enrolled students.

(3) Institutions shall pay or credit refunds due on a reasonable or timely basis, not to exceed 30 days following the date upon which the student's withdrawal has been determined.

(4) Each institution shall publish a current schedule of all student charges, a statement of the purpose for those charges, and a statement of the cancellation and refund policies with examples of the application of the policies, and shall provide the schedule to all current and prospective students prior to enrollment The schedule shall clearly indicate and differentiate all mandatory and optional student charges. The institution shall include a clear statement written in English describing the procedures that a student must follow to cancel the contract or agreement and obtain a refund. The schedule shall specify the total costs of attendance which shall include, but not be limited to, tuition, fees, equipment costs, housing, transportation, books, necessary supplies, materials, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

The schedule shall clearly identify all charges and deposits that are nonrefundable.

(5) The council shall take into consideration the contract for educational services entered into with the student, as well as the length and character of the educational program in determining standards for refunds. The decision of the council shall be final.

(e) That any written contract or agreement signed by a prospective student will not become operative until the student makes an initial visit to the institution or attends the first class or session of instruction. The school officials are obligated to provide the student with a thorough tour of the campus facilities and to place a written statement, signed by the student, in the student's file to

verify that the visitation and campus tour were provided. This provision does not apply to correspondence schools or other distance learning programs.

(f) That any written contract or agreement for a course of study with an institution shall include each of the following:

(1) On the first page of the agreement or contract, in 12-point boldface print or larger, the following statement:

"Any questions or problems concerning this school which have not been satisfactorily answered or resolved by the school should be directed to the Council for Private Postsecondary Education, Sacramento, California 95814."

(2) In underlined capital letters on the same page of the contract or agreement in which the student's signature is required, the total amount that the student is obligated to pay for the course of instruction and all other services and facilities furnished or made available to the student by the school, including any charges made by the school for tuition, room and board, books, materials, supplies, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

(3) A list of any charges and deposits that are nonrefundable clearly identified as "nonrefundable" charges.

(4) A written statement signed by a representative of the institution, which certifies that the institution has met all disclosure requirements required by this section and, for institutions participating in state or federal student assistance programs, has met all requirements for the administration of any state financial aid program under Chapter 2 (commencing with Section 69500) of Part 42 or any federal student assistance program under Title IV of the federal Higher Education Act of 1965 (P.L. 89-329), extensions of that act, amendments to that act, and the rules and regulations adopted under that act.

(5) The name and address of the school and the addresses where instruction will be provided.

(6) The name and description of the course of instruction, including the total number of classes, hours, or lessons required to complete the course of instruction.

(7) A clear and conspicuous statement that the agreement or contract is a legally binding instrument when signed by the student and accepted by the school.

(8) A clear and conspicuous caption, "BUYER'S RIGHT TO CANCEL" under which it is explained that the student has the right to cancel the course and obtain a refund, the form and means of notice that the student should use in the event that he or she elects to cancel the enrollment agreement, and the title and address of the school official to whom the notice should be sent or delivered.

(9) A clear statement of the refund policy written in plain English.

(10) The signature of the student under the following statement which is presented in 12-point boldface or larger print: "My signature below certifies that I have read, understood, and agreed to my rights

and responsibilities, and that the institution's cancellation and refund policies have been clearly explained to me."

The council shall, in consultation with its appropriate advisory committee, adopt a model contract form that shall be used by each institution.

All contracts and enrollment agreements signed by the student shall be written in language which is capable of being easily understood. If English is not the primary language spoken by the student, the student shall have the right to obtain a clear explanation of the terms and conditions of the agreement and all cancellation and refund policies in his or her primary language.

(g) That neither the institution nor its agents engage in sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair.

(h) That the institution provides to students and other interested persons, prior to enrollment, a catalog or brochure containing at a minimum the following information.

(1) Descriptions of the instruction provided under each course offered by the institution.

(2) The number of credit hours or clock hours of instruction or training per unit or units required for completion of the educational degree or certificate program.

(3) The attendance, dropout, and leave of absence policies.

(4) The faculty and their qualifications.

(5) The schedule of tuition, fees, and all other charges and expenses necessary for the term of instruction and the completion of the course of study.

(6) The cancellation and refund policies.

(7) For institutions which participate in federal and state financial aid programs, all consumer information which the institution is required to disclose to the student.

(8) All other material facts concerning the institution and the program or course of instruction which are reasonably likely to affect the decision of the student to enroll, as prescribed by rules and regulations adopted by the council.

(9) No written contract signed by the student shall be enforceable unless the information specified in this subdivision has been disclosed to the student.

(i) That each institution offering a degree or certificate program designed to prepare students for a particular vocational, trade, or career field shall provide to each prospective student a school performance fact sheet disclosing the following information:

(1) The number and percentage of students who begin the institution's program and successfully complete the entire program. The rate shall be calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year and who successfully completed the program.

(2) The passage rates of graduates in the program for the most

recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certificate examination required by the state for employment in the particular vocational, trade, or career field.

(3) The number and percentage of students who begin the program and secure employment in the field for which they were trained. In calculating this rate, the institution shall consider as not having obtained employment, any graduate for who the institution does not possess evidence, documented in his or her file, showing that he or she has obtained employment in the occupation for which the program is offered.

(4) The average annual starting wages or salary of graduates of the institution's program, if the institution makes a claim to prospective students regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field. The institution shall disclose to the prospective student detailed statistics or other information necessary to substantiate the truthfulness of the claim.

Each school which offers or advertises placement assistance for any course of instruction shall file with the council its placement statistics for the 12-month period or calendar year immediately preceding the date of the school's application for annual review for every course of instruction.

The council shall develop standards and criteria to be used by each institution in determining the statistical information required by this subdivision.

(j) That upon satisfactory completion of training, the student is given an appropriate degree or diploma by the institution, indicating that the course or courses of instruction or study have been satisfactorily completed by the student.

(k) That adequate and accurate records are maintained by the institution, in accordance with regulations adopted by the council, and that satisfactory standards are enforced relating to attendance, progress, and performance.

(*l*) That the institution maintains current records for a period of not less than five years at its principal place of business within the State of California, immediately available during normal business hours, for inspection by the council or the Attorney General of California showing all of the following:

(1) The names and addresses, both local and home, including city and state, of each of its students.

(2) The courses of study offered by the institution.

(3) The names and addresses, including city and street, of its faculty, together with a record of the educational qualifications of each.

(4) The degrees or diplomas and honorary degrees and diplomas granted, the date of granting, together with the curricula upon which the diplomas and degrees were based.

(m) That the institution provides instruction as part of its

educational program. Instruction shall include any specific, formal arrangement by an institution for its enrollees to participate in learning experiences wherein the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

(n) Institutions certified to offer flight instruction by the Federal Aviation Administration, or its successor agency, shall comply with all of the requirements of this section, but shall not be required to file any materials with the council which are not required by the Federal Aviation Administration, or its successor agency, except those minimally necessary to administer the Student Tuition Recovery Fund, pursuant to Section 94342, as determined by the council. The responsibility for monitoring and enforcing institutional compliance for these institutions shall be with the council.

Individual flight instructors not requiring any advance payments, who do not negotiate a formal contract of indebtedness, and who do not have an established place of business other than their residences shall be exempt from the requirements of this section.

94312.2. Each institution approved to operate under this chapter shall be required to report to the council, by July 1 of each year, the following information for educational programs offered in the prior 12 months:

(a) The total number of students enrolled by level of degree.

(b) The number of degrees awarded by level of degree.

(c) The degree levels offered.

(d) Program completion rates.

(e) Placement data for vocational training programs, unless that data already is required to be provided by the institution under other requirements of this chapter.

(f) The schedule of tuition and fees required for each term, program, course of instruction, or degree offered.

(g) If an institution submits an audited financial statement to the United States Department of Education, the institution shall submit a copy of that financial statement to the council.

(h) Financial information demonstrating compliance with subdivisions (b) and (c) of Section 94316.6.

(i) Institutions having candidate status shall submit an annual report reviewing their progress in meeting the standards required for approval status.

(j) Any additional information that the council may prescribe.

Program completion rates and placement data shall be reported in accordance with the standards and criteria prescribed by the council pursuant to subdivision (i) of Section 94312. Based on the review of information submitted to fulfill the requirements of this section, the council may initiate a compliance review and may place the institution on probation pursuant to subdivision (e) of Section 94310 and subdivision (e) of Section 94311, and may require evidence of financial stability and responsibility pursuant to Section 94311.5.

94313. (a) Within 30 days of receiving a written notice described

in subdivision (a) or subdivision (c) of Sections 69509.5 and 69509.7 from the Student Aid Commission, the council 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 in compliance with this chapter.

(b) Within a reasonable time after the commencement of the investigation required in subdivision (a), the council shall conclude its investigation and take action against the institution involved, as appropriate.

94315. (a) No institution may offer education which develops or improves an occupational skill, knowledge, or ability unless the ownership for its statewide operations has filed with the council an annual declaration under penalty of perjury for public disclosure setting forth the following information:

(1) The owner's legal name, headquarters address, and the name of an agent for the service of process within California.

(2) All names, whether real or fictitious, under which the owner is doing and will do business.

(3) The names and addresses of the principal officers of the ownership.

(b) The annual declaration under penalty of perjury shall be accompanied by representative copies of any existing media advertising or promotional material. Institutions filing pursuant to this section shall be exempt from all of the requirements of this chapter, except for those prescribed in subdivision (d) of Section 94320, Section 94321, and Section 94336. Filing pursuant to this section shall not be interpreted to mean, and it shall be unlawful for, any institution to expressly or impliedly represent by any means whatsoever, that the State of California, or the Council for Private Postsecondary and Vocational Education, has made any evaluation, recognition, accreditation, approval, or endorsement of the institution or the education offered.

(c) This section does not apply to education with an educational, professional, technological, or vocational objective which is subject to approval pursuant to Section 94311. Institutions accredited by a national or applicable regional accrediting agency recognized by the United States Department of Education, or accredited or approved by a California state agency for that education, are exempted from this section. Also exempted from this section are remedial and tutorial education, as determined by the council, any education which is offered free of charge, and any education offered by nonprofit entities, including national or statewide professional and occupational organizations and public benefit corporations.

Article 3. Prohibited Activities

94320. No institution, or representative of that institution shall:

(a) Operate in this state a postsecondary or vocational educational institution not exempted from this chapter, unless the institution is

currently approved to operate issued pursuant to this chapter.

(b) Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, an institution not exempted from this chapter, whether that institution is within or outside this state, unless that agent is a natural person and has a currently valid agent's permit issued pursuant to this chapter, nor accept contracts or enrollment applications from an agent who does not have a current permit as required by this chapter, provided, that the council may adopt rules and regulations to permit the rendering of legitimate public information services without a permit.

(c) Instruct or educate, or offer to instruct or educate, including soliciting for those purposes, enroll or offer to enroll, contract or offer to contract with any person for that purpose, or award any educational credential, or contract with any institution or party to perform any act, in this state, whether that person, agent, group, or entity is located within or without this state, unless that person, agent, group, or entity observes and is in compliance with the minimum standards set forth in Section 94312 or Article 2.5 (commencing with Section 94316), whichever is applicable, the criteria established by the council pursuant to subdivision (b) of Section 94305, and the rules and regulations adopted by the council pursuant to subdivision (d) of Section 94305.

(d) Use, or allow the use of, any reproduction or facsimile of the Great Seal of the State of California on any diploma.

(e) Make, or cause to be made, any statement, or representation, oral, written, or visual, in connection with the offering or publicizing of a course, if that person, firm, association, partnership, or corporation knows, or reasonably should have known, the statement or representation to be false, deceptive, inaccurate, or misleading.

(f) Promise or guarantee employment.

(g) Advertise concerning job availability, degree of skill and length of time required to learn a trade or skill unless the information is accurate and in no way misleading.

(h) Advertise, or indicate in any promotional material, that correspondence instruction, or correspondence courses of study are offered without including in all advertising or promotional material the fact that the instruction or courses of study are offered by correspondence or home study

(i) Advertise, or indicate in any promotional material, that resident instruction, or courses of study are offered without including in all advertising or promotional material the location where the training is given or the location of the resident instruction.

(j) Solicit students for enrollment by causing any advertisement to be published in "help wanted" columns in any magazine, newspaper, or publication or use "blind" advertising which fails to identify the school or institution.

(k) Use the terms "approval," "approved," "approval to operate," or "approved to operate," without stating clearly and conspicuously that the approval to operate does not imply an endorsement or

recommendation by the state or by the council.

(*l*) State or imply that the council's grant to the institution of approval to operate indicates that the institution exceeds minimum state standards, or that the council or the state endorses or recommends the institution.

(m) Fail to comply with federal requirements relating to the disclosure of information to students regarding vocational and career training programs, as described in subdivision (i) of Section 94312.

94321. (a) Any institution willfully violating any provision of Section 94312 or 94320 shall be unable to enforce any contract or agreement arising from the transaction in which the violation occurred, and any willful violation is a ground for revoking an approval to operate in this state or for denying a renewal application.

(b) Notwithstanding any provision of the contract or agreement, a student may bring an action for a violation of this article or for an institution's failure to perform its legal obligations and, upon prevailing thereon, shall be entitled to the recovery of damages, equitable relief, or any other relief authorized by this article, and reasonable attorney's fees and costs.

(c) If a court finds that a violation was willfully committed or that the institution failed to refund all consideration as required by subdivision (b) on the student's written demand, the court shall, in addition to the relief authorized under subdivision (b), award a civil penalty of up to two times the amount of the damages sustained by the student

(d) The remedies provided in this article supplement but do not supplant the remedies provided under other provisions of law.

(e) An action brought under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the action.

(f) Any provision in any agreement which purports to require a student to invoke any grievance dispute procedure established by the institution before enforcing any right or remedy is void and unenforceable.

(g) A student may assign his or her cause of action for a violation of this article to the council, or to any state or federal agency that guaranteed or reinsured a loan for the student or that provided any grant or other financial aid.

(h) This section applies to any action pending on the effective date of this section.

(i) This section shall supplement and not displace the authority granted the Division of Labor Law Enforcement under Section 1700.4 of the Labor Code to the extent that placement activities of trade schools are subject to regulation by the division under the Labor Code.

94322. (a) If the council has evidence that an institution has violated this article and determines that immediate action is necessary to protect students, prevent misrepresentations to the public, or prevent the loss of public funds or tuition and other money

paid by students, the council may institute an emergency action to suspend, for not more than 60 days, the approval of an institution to operate.

(b) The council shall provide notice of the emergency action to the institution by certified mail or personal service. The notice shall specify the alleged violations on which the emergency action is based, the effective date of the order implementing the emergency action, and the right of the institution to request a hearing within 30 days of the service of the notice. If a hearing is requested, the council shall set a date within 20 days after receipt of the request.

(c) If the council's proposed action calls for an immediate suspension of the institution, the institution, notwithstanding subdivision (b), shall be provided an opportunity for a hearing by the council within 24 hours of receiving notification and before an emergency action is initiated. If the council decides after the hearing to take the emergency action, the institution shall not be precluded from requesting a second hearing within 30 days of the emergency action.

(d) The council may terminate the emergency action at any time if the council concludes that the grounds for instituting the emergency action no longer remain.

(e) If the institution does not request a hearing within the time specified in subdivision (b) or if the council concludes after a hearing that grounds exist for the suspension or revocation of the institution's approval to offer courses of instruction, the council may permanently suspend or revoke the institution's approval to operate, may order probation and a penalty, or may condition the institution's approval to operate as the council deems appropriate.

(f) During the pendency of an emergency action, the council may investigate the institution's compliance with this article and may institute a proceeding under Section 94319.10 to suspend or revoke an institution's approval to operate, or order probation and a penalty, based upon any violation of this article.

(g) This section supplements but does not supplant the authority of the council to seek judicial relief, including a temporary restraining order and injunction, to redress any violation of this article.

Article 5. Applications and Causes for Denial

94330. (a) Each institution desiring to operate in this state shall make application to the council, upon forms to be provided by the council. The application shall include, as a minimum, at least the following:

(1) A catalog published or proposed to be published by the institution containing the information specified in the criteria adopted by the council. The catalog shall include specific dates as to when the catalog applies.

(2) A description of the institution's placement assistance, if any.

(3) Copies of media advertising and promotional literature.

(4) Copies of all student enrollment agreement or contract forms and instruments evidencing indebtedness.

(5) Copies of participation agreements for state and federal financial aid programs.

(6) The name and California address of a designated agent upon whom any process, notice, or demand may be served.

(7) The information specified in Section 94312.2.

(8) The institutions most current profit and loss statement and current balance sheet, or an audit prepared by a licensed certified public accountant in accordance with generally accepted auditing standards.

(b) Each application shall be signed and certified under oath by the owners of the school, or where the school is incorporated, by the principal owners of the school (those who own at least 10 percent of the stock), or by the governing body of a nonprofit school.

(c) Following review of the application and any other further information submitted by the applicant, or required in conformity with Sections 94310 and 94311, and any investigation of the applicant as the council may deem necessary or appropriate, the council shall either grant or deny approval to operate to the applicant.

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply to any determination of the council made pursuant to this section.

(d) The council shall review and investigate all institutions and courses of instruction approved under this chapter. Consideration in the scheduling of reviews and investigations shall be afforded to student complaints and information collected by the Attorney General, the Student Aid Commission, any board within the Department of Consumer Affairs, or any other federal, state, or local agency.

(e) The approval to operate shall be issued to the owner or the governing body of the applicant institution, and shall be nontransferable. Any person, partnership, or corporation that makes a proper application and complies with this chapter and each standard, rule, and regulation pertaining to this chapter shall be qualified to receive an approval to operate or an approval of the transfer of ownership.

(f) In the event that a shift in control or change of ownership of an institution occurs, an application for approval for the institution under the changed ownership shall be filed with the council at least 20 days prior to the shift in control or change in ownership. Whenever an owner, partnership, or corporation operates an institution at different locations, an application for approval shall be filed for each location.

(g) No application for ownership or transfer of ownership shall be approved for any applicant that has been previously found in any judicial or administrative proceeding to have violated this chapter, or if there exists any of the grounds for denial set forth in Section 480

of the Business and Professions Code.

(h) No change in ownership of the institution shall be made until the application is approved. Upon approval of a change in ownership, the council shall give written notice to the Student Aid Commission.

(i) For the purposes of this section, a change in ownership occurs when there is a change of control of the institution, or where a person, partnership, or corporation which did not previously own at least 25 percent of the stock or controlling interest of an institution or its parent corporation, acquires ownership of at least 25 percent of the stock of the institution or its parent corporation.

(j) At least 60 days prior to the expiration of an approval to operate the institution shall complete and file with the council an application form for renewal of its approval to operate. The renewal application shall be reviewed and acted upon as provided in this section.

(k) The council may refuse to issue or renew any private postsecondary or vocational educational institution's approval to operate, or may revoke any approval to operate for any one, or any combination, of the following causes:

(1) A violation of this chapter, or any standard, rule, or regulation established under this chapter.

(2) Furnishing false, misleading, or incomplete information to the council, or the failure to furnish information requested by the council.

(3) A finding that an owner, person in control, director, or officer of an institution is not in compliance with Section 94311.5.

(4) A finding that a signatory to an application for an approval to operate was responsible for the closure of any institution in which there were unpaid liabilities to the state or federal government, or uncompensated pecuniary losses suffered by students without restitution.

(5) The failure of the institution to maintain the minimum educational standards prescribed by this chapter, or to maintain standards which are the same as, or substantially equivalent to, those represented in the school's applications and advertising.

(6) Presenting to prospective students information which is false or misleading relating to the school, to employment opportunities, or to enrollment opportunities in institutions of higher learning after entering into or completing courses offered by the school.

(7) The failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered as required by statute.

(8) The failure to provide timely and correct refunds to students.

(9) Paying a commission or valuable consideration to any persons for acts or services in violation of this chapter.

(10) Attempting to confer a degree, diploma, or certificate to any student in violation of this chapter.

(11) Misrepresenting to any students or prospective students that they are qualified, upon completion of any course, for admission to

professional examination under any state occupational licensing provision.

(12) The failure to correct any deficiency or act of noncompliance under this chapter, or the standards, rules, and regulations, established and adopted under this chapter within reasonable time limits set by the council.

(13) The conducting of business or instructional services at any location not approved by the council.

If there is reasonable cause to believe that there has been a violation by a private postsecondary or vocational educational institution of the standards prescribed by this chapter, the council shall conduct an investigation of the institution.

(*l*) Proceedings in connection with the denial of an application for approval to operate or the revocation of an approval to operate shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the council shall have all of the powers granted in that chapter.

(m) Upon taking any action to suspend or revoke an institution's approval to operate, the council shall provide written notice to the Student Aid Commission and to any appropriate accrediting association.

Article 6. Fees

94331. The council shall establish and maintain a Private Postsecondary and Vocational Education Administration Fund. The fund shall be divided into two special accounts, pursuant to the requirements of subdivision (g) of Section 94304. All fees collected pursuant to this section shall be credited to this fund, along with any interest on the money, for the administration of this chapter. The money in the fund is continuously appropriated to the council without regard to fiscal years. However, if the Legislature makes an appropriation for the support of the council in the Budget Act of any fiscal year, the amount for the support of the council expended from the respective accounts of the Private Postsecondary and Vocational Education Administration Fund during that fiscal year shall not exceed the amount appropriated by the Budget Act.

For the approval of private institutions operating under this chapter, the council shall charge an amount not exceeding the actual costs of approving the private institutions. On or before January 1, 1992, and based on the budget requirements identified in the report to the Legislature prepared by the advisory committee established by the California Postsecondary Education Commission for those purposes, the council shall adopt a fee schedule for all institutions approved under the provisions of this chapter, including the maximum amounts to be charged for an institution's initial application and annual renewal. The fee schedule shall provide adequate resources for the council to implement effectively the provisions of this chapter It is the intent of the Legislature that the

council shall adopt a fee schedule that reflects the size of the institution, with institutions enrolling a larger number of students being required to pay a larger annual fee than those with smaller student enrollments. The council shall annually present its proposed budget and fee schedule to the Department of Finance and the Joint Legislative Budget Committee for their review as part of the annual budget process. The council shall annually publish a schedule of the current fees to be charged pursuant to this section and shall make this schedule generally available to the public. The fees may be increased up to the maximum allowable level by a majority vote of the council, without any additional review and approval by the Office of Administrative Law. Increases above the maximum level shall be changed through legislation enacted by the Legislature and signed by the Governor.

94331.5. Until the council establishes the fee schedule required by Section 94331, the following fee schedule shall govern the fees to be paid by private institutions operating under this chapter:

(a) For an approval to issue specified degrees pursuant to Section 94310:

(1) Four thousand five hundred dollars ($4,500) for an institution's original application.

(2) An amount not to exceed two thousand five hundred dollars ($2,500) for an institution's annual renewal.

(3) Two thousand five hundred dollars ($2,500) for an institution's additional degree title.

(b) For an approval to issue diplomas or offer courses pursuant to Section 94311:

(1) (A) One thousand dollars ($1,000) for a new institution.

(B) Five hundred dollars ($500) for a new institution of an administrative family.

(C) Two hundred dollars ($200) for a new institution of a nonprofit public benefit corporation, organized pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, if that education is limited to instruction in employment and skill training and if it is offered at no charge to those persons receiving that education.

(2) One thousand two hundred dollars ($1,200) for an institution's annual renewal if the institution does not participate in publicly funded student financial assistance programs and enrolls more than 150 students each year. Six hundred dollars ($600) for an institution's annual renewal if the institution does not participate in publicly funded student financial assistance programs and enrolls 150 or fewer students each year. Two thousand five hundred dollars ($2,500) for an institution's annual renewal if the institution does participate in publicly funded student financial assistance programs and enrolls more than 150 students each year. One thousand six hundred dollars ($1,600) for an institution's annual renewal if the institution does participate in publicly funded student financial assistance programs and enrolls 150 or fewer students each year.

(3) One thousand dollars ($1,000) for an institution's change of ownership.

(4) Two hundred fifty dollars ($250) for an institution's change of location.

(c) For an annual filing by an ownership to offer career-related education pursuant to Section 94315: two hundred dollars ($200).

(d) For a private school agent's permit pursuant to Section 94333: twenty-five dollars ($25) annually per applicant.

(e) For agencies with three or fewer employees:

(1) Seven hundred fifty dollars ($750) for an original application.

(2) Five hundred dollars ($500) for the agency's annual renewal.

(3) Five hundred dollars ($500) for the agency's change of ownership.

(f) For agencies with four or more employees:

(1) One thousand five hundred dollars ($1,500) for an original application.

(2) One thousand dollars ($1,000) for the agency's annual renewal.

(3) One thousand dollars ($1,000) for the agency's change of ownership.

94332. (a) Any person claiming damage or loss as a result of any act or practice by a postsecondary or vocational educational institution or its agent, or both, which is a violation of this chapter or of the rules and regulations adopted under this chapter, may file with the council a verified complaint against that institution or against its agent, or both.

The complaint shall set forth the alleged violation and shall contain any other information as may be required by the council

(b) The council shall investigate any complaint and may attempt to effectuate settlement by persuasion and conciliation.

(c) If, upon all the evidence at a hearing, the council shall find that an institution or its agent, or both, has engaged in or is engaging in, any act or practice which violates this chapter or the rules and regulations adopted under this chapter, the council shall report that evidence to the Attorney General. The council may also, as appropriate, based on its own investigation or the evidence adduced at a hearing, or both, commence an action to revoke an institution's approval to operate or an agent's permit.

(d) Complaints received by the council pertaining to institutions accredited by the Western Association of Schools and Colleges shall be forwarded to the association. Actions by the council relating to complaints against these institutions shall be limited to the transmittal of this information.

(e) A person entitled to bring an action for the recovery of damages or other relief shall not be required to file a complaint pursuant to this section, or to pursue or exhaust any administrative process or remedy before bringing the action.

94333. (a) Notwithstanding any other provision of this chapter concerning agents, the owner of at least 51 percent of the equitable

interest in an institution shall be exempt from this section by virtue of having filed for a permit to operate under Section 94310 or 94311.

No person shall act as an agent, as defined by subdivision (d) of Section 94302, unless that person holds a valid permit issued by the council. Administrators or faculty, or both, who make informational public appearances, but whose primary task is not to serve as a paid recruiter, are exempted from this section.

The application for a permit shall be furnished by the council and shall include the following:

(1) A statement signed by the applicant that he or she has read the provisions of this chapter and the rules and regulations adopted pursuant to this chapter.

(2) A surety bond issued by an admitted surety insurer making provision for indemnification of any person for any material loss suffered as a result of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study. The term of the bond shall extend over the period of the permit. The bond may be supplied by the institution or by the person for whom the issuance of the permit is sought and may extend to cover individuals separately or to provide blanket coverage for all persons to be engaged as representatives of the institution. The bond shall provide for liability in the penal sum of five thousand dollars ($5,000) for each agent to whom coverage is extended by its terms. Neither the principal nor surety on a bond may terminate the coverage of the bond, except upon giving 30 days' prior written notice to the council.

(3) A fee as required by Section 94331.

(b) An agent representing more than one institution shall obtain a separate agent's permit and bond for each institution represented.

(c) No person shall be issued a permit if he or she has been previously found in any judicial or administrative proceeding to have violated this chapter, or there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

(d) A permit shall be valid for the calendar year in which it is issued, unless sooner revoked or suspended by the council for fraud or misrepresentation in connection with the solicitation for the sale of any course of study for any violation of this chapter, or for the existence of any condition in respect to the permittee or the school he or she represents which, if in existence at the time the permit was issued, would have been grounds for denial of the permit.

(e) The permittee shall carry the permit with him or her for identification purposes when engaged in the solicitation of sales and the selling of courses of study away from the premises of the school, and shall produce the permit for inspection upon the request of any person.

(f) Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply to any determination of the council made pursuant to this section.

(g) The issuance of a permit pursuant to this section shall not be

interpreted as, and it shall be unlawful for any individual holding any permit to expressly or impliedly represent by any means whatever, that the council has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the individual.

(h) It shall be unlawful for any individual holding a permit under this section to expressly or impliedly represent that the issuance of the permit constitutes an assurance by the council that any correspondence course of study being offered for sale by the individual will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective, or will result in employment or personal earnings for the student.

(i) No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair.

(j) The council shall maintain records for five years of each application for a permit and each issuance, denial, termination, suspension, and revocation of a temporary permit or permit.

(k) A student may bring an action for an agent's violation of this chapter or any fraud or misrepresentation and, upon prevailing, shall be entitled to the recovery of damages, reasonable attorney's fees, and costs. If a court finds that the violation was willfully committed, the court shall, in addition to the award of damages, award a civil penalty of up to two times the amount of damages sustained by the student.

(*l*) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding five thousand dollars ($5,000), or by both.

94334. (a) Except as provided in subdivision (g), any agency, as defined by subdivision (b) of Section 94302, shall be required to hold a valid authorization issued by the council. The application for an authorization shall include all of the following:

(1) A current financial statement prepared by a certified public accountant.

(2) Evidence of a surety bond issued by an admitted surety insurer making provision for indemnification of any person for any material loss suffered as a result of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any course of study, or as a result of any violation of this chapter. The term of the bond shall extend over the period of the authorization. The bond shall provide for liability in the penal sum of two hundred fifty thousand dollars ($250,000) for each agency to which coverage is extended by its terms. Neither the principal nor surety on a bond may terminate the coverage of the bond except upon giving 30 days' prior written notice to the council.

(3) A copy of the student disclosure statement to be read and signed by all prospective students referred to institutions by an

agency. The student disclosure statement shall include, but shall not be limited to, all of the following:

(A) A statement to the effect that no promise of employment has been made by the agency.

(B) A statement to the effect that repayment of any debt incurred by a student in connection with his or her education will be the sole responsibility of the student.

(C) The amount and terms of any fee to be paid by the student to the agency.

(D) A verbatim statement, as follows:

Any questions or problems concerning this agency should be directed to the Council for Private Postsecondary and Vocational Education, Sacramento, California 95814.

(E) A statement to the effect that the institution or institutions to which the prospective student is referred by the agency has the obligation to make available to the student a catalog or brochure containing information describing all of the following:

(i) The courses offered.

(ii) Program objectives.

(iii) Length of program.

(iv) The faculty and their qualifications.

(v) Schedule of tuition, fees, and all other charges and expenses necessary for the completion of the course of study.

(vi) Cancellation and refund policies.

(vii) Total cost of tuition over the period needed to complete the student's education.

(viii) For vocational training programs, placement data, including program completion rates, placement rates, and starting salaries.

(ix) Other material facts concerning the institution and the program or course of instruction that are reasonably likely to affect the decision of the student to enroll in the institution.

(4) Identification of all employees of the agency and their titles, and of all agents under contract with the agency.

(5) Identification of all owners and if the entity is a corporation of the identification of all persons possessing an interest equal to, or in excess, of 10 percent.

(6) Identification of all vendors of educational services for which the agency provides recruitment services.

(7) A signed statement by the applicant that all employees engaged in recruitment activities will be required to read Section 94320.

(b) Within 15 days of receipt of a completed application and prior to issuance of an authorization a representative of the council shall inspect the applicant agency and verify the application. Within 30 days of the inspection the council shall issue the authorization for a one-year period, subject to annual renewal at the end of that period, or deny the application. The council shall deny the authorization of the agency if any owner, officer, or director of the agency has previously been found in any judicial or administrative proceeding

to have violated this chapter, or if there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

(c) Any employee of an authorized agency engaged in student recruitment activities of an authorized agency is exempt from the bond requirements of Section 94333.

(d) Neither the agency nor any of its employees shall make any untrue or misleading statement in the course of any solicitation or recruitment activity or engage in the sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair.

(e) An agency or an employee of an agency shall provide a prospective student with the disclosure statement described in paragraph (3) of subdivision (a) and shall allow the prospective student a sufficient opportunity to read it before soliciting or recruiting him or her for enrollment or referring him or her to an institution. This subdivision shall not apply if the agency or the agency's employee complies with Section 94316.3.

(f) Any institution approved under this chapter shall cease any and all recruitment activities involving the agency upon action by the council to revoke or deny an agency authorization Failure of the institution to do so upon presentation of notice of the council's action shall be cause to deny or revoke any approval held by that institution.

(g) Any agency engaged in recruiting activities on January 1, 1991, may continue its recruiting activities but shall make an application to the council as required by this section within 30 days of the application becoming available and the council, within 30 days of the receipt of the application, shall issue the authorization for a one-year period or deny authorization. Thereafter, the agency shall possess a current authorization in order to continue to operate.

(h) This section shall not apply to any agency recruiting solely for institutions described in Section 94310.

(i) The council shall maintain records for five years of each application for an authorization, each verification by the council of an authorization, and each denial, issuance, and revocation of an authorization.

(j) A student may bring any action against any agency if the agency or an employee of the agency violates this chapter or commits any fraud or misrepresentation and, upon prevailing, shall be entitled to the recovery of damages, reasonable attorney's fees, and costs. If a court finds that the violation was willfully committed, the court shall, in addition to the award of damages, award a civil penalty of up to two times the amount of damages sustained by the student.

(k) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both.

94335. (a) No note, other instrument of indebtedness, or contract relating to payment for educational services shall be enforceable by any institution within or outside this state governed

by this chapter unless at the time of execution of that note, other instrument of indebtedness, or contract, the institution has a valid approval to operate pursuant to this chapter.

(b) No note, other instrument of indebtedness, or contract relating to payment for educational services shall be enforceable by any institution within or outside this state governed by this chapter unless the agent, who enrolled persons to whom educational services were to be rendered or to whom degrees or diplomas were to be granted pursuant to this chapter, held a valid agent's permit at the time of execution of the note, other instrument of indebtedness, or contract.

(c) Any school or institution governed by this chapter extending credit or lending money to any person for tuition, fees, or any charges whatever for educational services to be rendered or furnished shall cause any note, instrument, or other evidence of indebtedness taken in connection with that loan or extension of that credit to be conspicuously marked on the face thereof with the following notice:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSE WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

In the event the school or institution fails to do so, it shall be liable for any damage or loss suffered or incurred by any subsequent assignee, transferee, or holder of that evidence of indebtedness on account of the absence of that notification.

(d) Notwithstanding the presence or absence of that notification and notwithstanding any agreement in which the student waives the right to assert any claim or defense, the school or institution making that loan or extending that credit and the transferee, assignee, or holder of that evidence of indebtedness, shall be subject to all defenses and claims which could be asserted against the school or institution which was to render or furnish those educational services by any party to that evidence of indebtedness or by the person to whom those educational services were to be rendered or furnished up to the amount remaining to be paid thereon.

(e) Institutions which participate in federal student assistance programs and which comply with the financial disclosure and notification requirements for those programs shall be deemed to be in compliance with the standards prescribed by this section.

94336 (a) Any person or business entity, regardless of the form of organization, that willfully violates Article 2.5 (commencing with Section 94316) or Section 94312 or 94320 is guilty of a crime and shall

be subject to separate punishment for each violation either by imprisonment in the county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both, or by imprisonment in the state prison, by a fine not exceeding fifty thousand dollars ($50,000), or by both.

(b) Notwithstanding any other law, any prosecution under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the prosecution.

(c) The penalties provided by this section supplement, but do not supplant, the remedies and penalties provided under other law.

94337. (a) The council may adopt and enforce regulations as may be necessary, appropriate, or useful to interpret and implement this chapter. Pending the adoption of formal regulations, the council may adopt temporary regulations which, notwithstanding any provision of law, shall become effective immediately, and which shall be superseded upon the adoption of formal regulations

(b) If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

94338. Any institution approved by the council pursuant to this chapter may contract with any school district, county superintendent, community college district, or the governing body of an agency maintaining a regional occupational center or program, subject to Section 8092.

94339. (a) The Attorney General, or any district attorney or city attorney may make investigations as may be necessary to carry out the provisions of this chapter, including, but not limited to, investigations of complaints. The council may, jointly, bring actions as may be necessary to enforce the provisions of this chapter, including, but not limited to, civil actions for injunctive relief. In actions brought pursuant to this paragraph, the council shall be represented by the Attorney General.

(b) The Attorney General shall represent the council in any administrative proceedings arising under this chapter.

(c) Nothing in this section or this chapter shall preclude the Attorney General, or any district attorney or city attorney, from:

(1) Bringing any actions on behalf of the people as he or she is empowered by law to bring, including, but not limited to, actions based upon alleged violations of Chapter 5 (commencing with Section 17200) of Part 2, and Chapter 1 (commencing with Section 17500) of Part 3, of Division 7 of the Business and Professions Code.

(2) Conducting investigations as may be necessary to determine whether there have been violations of the provisions of law specified in paragraph (1) of this subdivision.

(3) Conducting any investigations that he or she is authorized to conduct, including, but not limited to, investigations authorized under Section 11180 of the Government Code.

94342. (a) The council shall establish and maintain a Student Tuition Recovery Fund, with a degree granting postsecondary educational institution account and a vocational educational institution account, for the purpose of relieving or mitigating pecuniary losses suffered by any California student of an approved institution who meets either of the following conditions:

(1) The student was enrolled in an institution prior to the institution's closure and prepaid tuition and suffered loss as a result of either the closure of the institution, the institution's breach or anticipatory breach of the agreement for the course of instruction, or a decline in the quality of the value of the course of instruction within the 30-day period before the institution's closure or, if the decline began before that period, the period of decline determined by the council.

(2) The student obtained a judgment against the institution for any violation of this chapter and the student certifies that the judgment cannot be collected after diligent collection efforts. The liability of the Student Tuition Recovery Fund to a student shall not exceed the amount of the student's tuition and the cost of materials related to the course of instruction.

(b) Payments from the fund to any student shall be made from the appropriate account with the fund, as determined by the type of institution into which the student has paid his or her fees, shall be at the discretion of the council, and shall be subject to any regulations and conditions as the council shall prescribe.

(c) The council shall attempt to obtain the names and addresses of persons who were students of an institution within 30 days prior to its closure, and shall notify these students of their rights under the Student Tuition Recovery Fund and the requirements for application for payment.

(d) (1) Students entitled to payment as provided in paragraph (1) of subdivision (a) shall file with the council a verified application indicating each of the following:

(A) The student's name, address, telephone number, and social security number.

(B) If any portion of the tuition was paid from the proceeds of the loan, the name of the lender and any state or federal agency that guaranteed or reinsured the loan.

(C) The amount of the prepaid tuition.

(D) The date the student ceased attending the institution.

(E) A description of the reasons the student ceased attending the institution

(F) If the student ceased attending because of a breach or anticipatory breach or because of the decline in the quality or value of the course of instruction as described in subparagraph (C) of paragraph (1) of subdivision (a), a statement describing in detail the nature of the economic loss incurred. The application shall be filed within one year of the council's service on the student of the notice described in subdivision (b) or, if no notice is served, within four

years of the institution's closure.

(2) Students entitled to payment as provided in paragraph (2) of subdivision (a) shall file with the council a verified application indicating the student's name, address, telephone number, and social security number, the amount of the judgment obtained against the institution, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a copy of the judgment and any other documents indicating the student's efforts made to enforce the judgment.

The application shall be filed within two years after the date upon which the judgment became final.

(3) The council may require additional information designed to facilitate payment to entitled students. The council shall relieve a student from the requirement to provide all of the information required by this subdivision if the council has the information or the information is not reasonably necessary for the resolution of a student's claim.

(e) Within 30 days of the council's receipt of an application for payment, the council shall pay the claim from the Student Tuition Recovery Fund or deny the claim. The council may, for good cause, extend the time period for up to 90 days to investigate the accuracy of the claim.

(f) If the council pays the claim, the amount of the payment shall be the total amount of the student's economic loss, notwithstanding the amount of the refund to which the student would have been entitled after a voluntary withdrawal, although the amount of the payment shall in no event exceed the amount of the student's tuition and the cost of materials related to the course of instruction. Upon payment of the claim, the council shall be subrogated to all of the student's rights against the institution to the extent of the amount of the payment.

(g) If the council denies the claim, the council shall notify the student of the denial and of the student's right to request a hearing within 60 days or any longer period permitted by the council. If a hearing is not requested within 60 days or any additional period reasonably requested by the student, the council's decision shall be final. If a hearing is requested, the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply.

It is the intent of the Legislature that, when a student is enrolled in an institution that closes prior to the completion of the student's program, the student have the option for a teach-out at another institution approved by the council. The council shall seek to promote teach-out opportunities wherever possible, with the student to be informed by the council that he or she has the option of either a payment from the fund or a teach-out.

94343. The council shall assess each institution which collects any moneys in advance of rendering services an amount equal to

one-tenth of 1 percent of the total course cost for each student newly enrolled. The assessment per student shall not be less than one dollar ($1), and not more than four dollars ($4). In addition, for each student who prepays an institution an amount in excess of four thousand dollars ($4,000), the council shall assess the institution one-half of 1 percent of the prepaid amount which exceeds four thousand dollars ($4,000). The council shall levy additional reasonable assessments only if they are required to ensure that sufficient funds are available to satisfy the anticipated costs of paying student claims pursuant to Section 94342. The assessments shall be paid into the State Treasury and credited to the appropriate account in the Student Tuition Recovery Fund, and the deposits shall be allocated, except as otherwise provided for in this chapter, solely for the payment of valid claims to students. Unless additional reasonable assessments are required, no assessments shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in either account of the fund exceeds one million dollars ($1,000,000). However, regardless of the balance in the fund, assessments shall be made on any newly approved institution. Notwithstanding Section 13340 of the Government Code, the moneys so deposited in the Student Tuition Recovery Fund are continuously appropriated to the council for the purpose of paying claims to students pursuant to Section 94342.

Not more than one hundred thousand dollars ($100,000) per fiscal year shall be used for the administration of the tuition recovery program authorized by Section 94342 and this section. The interest earned on money in the fund shall be credited to the fund. Institutions which meet the student tuition indemnification requirements of a California state agency, or which demonstrate to the council that an acceptable alternative method of protecting their students against loss of prepaid tuition has been established, shall be exempted from this section.

In the event of a closure by any approved institution under this chapter, any assessments which have been made against those institutions, but have not been paid into the State Treasury, shall be recovered, or any payments from the Student Tuition Recovery Fund made to students on behalf of any institution may be recovered from that institution, by appropriate action taken by the council. The moneys so deposited in the Student Tuition Recovery Fund shall be exempt from execution and shall not be the subject of litigation or liability on the part of creditors of those institutions or students.

94343.2. (a) Any institution which willfully violates Section 94343 shall be subject to all of the following:

(1) The institution shall lose all rights to enforce the terms of any contract or agreement arising from the transaction in which the violation occurred.

(2) The institution shall refund to the student any fees which it has collected from that student.

(b) An institutions willful violation of the provisions of Section

94343 may be grounds for the revocation of that institution's approval to operate in this state.

94343.5. Students enrolling in institutions which come under Sections 94342 and 94343, shall disclose in writing, if applicable, the source of any and all guaranteed or insured loans granted for the purposes of paying tuition to that institution. In the event of a closure of any institution, the council shall provide any lending institution which is the source of any guaranteed or insured student loan with the names of students maintaining loans with that lending institution.

94344. (a) The governing board or other governing authority of any California postsecondary or vocational educational institution shall adopt regulations providing for the withholding of institutional services from students or former students who have been notified, in writing, at the student's or former student's last known address, that he or she is in default on a loan or loans under either of the following loan programs:

(1) The Stafford Student Loan program.

(2) The Supplemental Loans for Students program.

"Default," as used in this section, means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments

(b) The regulations adopted pursuant to subdivision (a) shall provide that the services withheld may be provided during a period when the facts are in dispute and when the student or former student demonstrates to either the governing board or other appropriate governing authority of the institution, or the Student Aid Commission and the appropriate entity or its designee, that reasonable progress has been made to repay the loan or that there exists a reasonable justification for the delay as determined by the institution. The regulations shall specify the services to be withheld from the student and may include, but are not limited to, the following:

(1) The provision of grades.

(2) The provision of transcripts.

(3) The provision of diplomas.

The adopted regulations shall not include the withholding of registration privileges.

(c) When it has been determined that an individual is in default on a loan or loans under either of the loan programs specified in subdivision (a), the Student Aid Commission shall give notice of the default to all institutions through which that individual acquired the loan or loans.

(d) Guarantors, or those who act as their agents or act under their control, who provide information to institutions pursuant to this

section, shall defend, indemnify, and hold harmless the governing board or other governing authority of the institutions from action resulting from compliance with this section when the action arises as a result of incorrect, misleading, or untimely information provided to the institution by the guarantors, their agents, or those acting under the control of the guarantors.

94345. Prior to September 1, 1995, the California Postsecondary Education Commission shall review and evaluate all of the following, and shall report to the Legislature on the results of this review and evaluation:

(a) The implementation of this chapter by the Council for Private Postsecondary and Vocational Education.

(b) The effectiveness of Sections 94310 and 94311 in protecting the integrity of degrees and diplomas issued by private educational institutions.

(c) The appropriateness of policies and actions by the council to delegate the responsibility for institutional regulation and oversight to a state board in the Department of Consumer Affairs, the Federal Aviation Administration, the state agency responsible for administering Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code, or the California Committee of Bar Examiners.

(d) The appropriateness of statutory provisions exempting colleges and universities accredited by the Western Association of Schools and Colleges from the approval provisions of this chapter, and the effectiveness of the Western Association of Schools and Colleges in responding to complaints pursuant to subdivision (d) of Section 94332.

(e) The effectiveness of this chapter in protecting students from misrepresentation and unfair practices and promoting the financial integrity of institutions operating in California.

(f) The desirability of revising existing statutes for the state funded student financial assistance programs to allow for participation by students choosing to attend any of the institutions approved under Section 94310.

The commission shall present any recommendations for revising this chapter, as it deems appropriate.

Article 6. Termination

94350. This chapter shall become inoperative on June 30, 1996, and as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 3 of this act shall become operative on January 1, 1991, except that Section 94304 of the Education Code shall be repealed on July 1, 1990.

SEC. 6. Section 4 of this act shall become operative on January 1, 1991, except that Article 1.5 (commencing with Section 94304) of

Chapter 3 of Part 59 of the Education Code shall become operative on July 1, 1990.

SEC. 7. The California Postsecondary Education Commission shall convene an advisory committee comprised of the Superintendent of Public Instruction, the Department of Finance, and the Office of the Legislative Analyst, to prepare a report to be submitted to the Governor and the Legislature by October 1, 1990, regarding the budgetary requirements of the Council for Private Postsecondary and Vocational Education. The report shall include each of the following:

(a) An estimate of the revenues to be derived from the collection of approval fees from postsecondary or vocational educational institutions pursuant to Chapter 3 (commencing with Section 94300) of Part 59 of the Education Code, as added by Section 3 of this act, and from federal funds, and whether these revenues are sufficient to support the operations of the council and the approval process for these institutions.

(b) An estimate of the amount of funds required from the General Fund, if any, if the revenues described in subdivision (a) are deemed to be inadequate to support the operations of the council and the state approval process.

SEC. 8. Section 94311.2 of the Education Code, as added by Section 4 of this act, shall not become operative if Assembly Bill 1402 of the 1989–90 Regular Session is chaptered and becomes effective on or before January 1, 1990.

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

CHAPTER 1308

An act to amend Sections 8561, 8568, 8576, 8583, 8585.2, 8586.2, 8586.7, and 8589 of, and to add Section 8561.5 to, the Fish and Game Code, relating to fish, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. The Legislature finds and declares that the restricted transfer of permits in the swordfish and thresher shark drift gill net fishery is necessary to provide an incentive for those who no longer wish to engage in those fisheries due to health, age, or entry into other fisheries or employment to retire from the fishery, to protect the community property and estate interests of spouses and heirs upon the dissolution of marriage or death of a permittee, to prevent speculation in permits, and to allow those seeking to enter the fishery an opportunity to obtain a permit by making available more permits pursuant to this restricted transfer method than would otherwise become available only through death or forfeiture of permits.

SEC. 2. Section 8561 of the Fish and Game Code is amended to read:

8561. (a) Notwithstanding Sections 8394 and 8603, shark and swordfish may not be taken for commercial purposes with drift gill nets except under a revocable drift gill net shark and swordfish permit issued annually by the department. These permits shall be revoked or suspended by the director upon a conviction for a willful violation of any provision of this article, Article 1 (commencing with Section 8601) or Article 5 (commencing with Section 8680) of Chapter 3, or violation of any condition of the permit by the permittee or the permittee's agent, servant, employee, or person acting under the permittee's direction or control.

(b) A drift gill net shark and swordfish permit shall not be required for the taking of sharks with drift gill nets with a mesh size smaller than eight inches in stretched mesh and twine size no. 18 or the equivalent of this twine size or smaller. A drift gill net shark and swordfish permit shall not be required for the taking of sharks north of a line extending west magnetically from Point Arguello.

SEC. 3 Section 8561.5 is added to the Fish and Game Code, to read:

8561.5. (a) Notwithstanding Section 8102, a permit issued pursuant to Section 8561 may be transferred by the permittee only if one of the following conditions is met:

(1) The permittee has held the permit for three or more years.

(2) The permittee is permanently injured or suffers a serious illness that will result in a hardship, as determined in a written finding by the director, to the permittee or his or her family if the permit may not otherwise be transferred or upon dissolution of a marriage where the permit is held to be community property.

(3) The permittee has died and his or her surviving spouse, heirs, or estate seeks to transfer the permit within six months of the death of the permittee or, with the written approval of the director, within the length of time that it may reasonably take to effect the transfer

(b) A permit may be transferred only to a person holding a commercial fishing license issued pursuant to Section 7850 and who

holds a general gill net permit issued pursuant to Section 8681.

(c) The transfer of a permit shall only become effective upon notice from the department. An application for transfer shall be submitted to the department with such reasonable proof as the department may require to establish the qualification of the person the permit is to be transferred to, the payment to the department of a transfer fee of one thousand dollars ($1,000), and a written disclosure, filed under penalty of perjury, of the terms of the transfer.

(d) Any restrictions on participation that were required in a permit transferred pursuant to Section 8102 before January 1, 1990, are of no further force or effect

SEC. 4. Section 8568 of the Fish and Game Code is amended to read:

8568. Drift gill net shark and swordfish permits shall be issued in two categories:

(a) A category of prior permittees, which shall consist of drift gill net shark and swordfish permittees who meet all of the following requirements:

(1) Possess a valid permit for the use of gill nets authorized pursuant to Section 8681.

(2) Possessed a valid drift gill net shark and swordfish permit during the preceding season and that permit was not subsequently revoked.

(3) During one of the two immediately preceding permit years, either landed at least 2,500 pounds of swordfish or 1,000 pounds of shark or landed shark or swordfish for which the permittee was paid at least one thousand dollars ($1,000). Landings shall be verified by the applicant's submission of landing receipts as provided in Section 8011.

(b) A category of new entrants. An applicants shall be eligible for this category if he or she does not qualify as a prior permittee and possesses a valid permit for the use of gill nets authorized pursuant to Section 8681.

SEC. 5. Section 8576 of the Fish and Game Code is amended to read:

8576. (a) Drift gill nets shall not be used to take shark or swordfish from February 1 to April 30, inclusive.

(b) Drift gill nets shall not be used to take shark or swordfish in ocean waters within 75 nautical miles from the mainland coastline between the westerly extension of the California-Oregon boundary line and the westerly extension of the United States-Republic of Mexico boundary line from May 1 to July 14, inclusive.

(c) Subdivisions (a) and (b) apply to any drift gill net used pursuant to a permit issued under Section 8561 or 8681.

(d) Notwithstanding the closure from May 1 to July 14, inclusive in subdivision (b), a permittee may land swordfish or thresher shark taken in ocean waters more than 75 nautical miles from the mainland coastline in that period if, for each landing during that closed period, the permittee signs a written declaration under penalty of perjury

that the fish landed were taken more than 75 nautical miles from the mainland coastline.

(e) If any person is convicted of falsely swearing a declaration under subdivision (d), in addition to any other penalty prescribed by law, the following penalties shall be imposed:

(1) The fish landed shall be forfeited, or, if sold, the proceeds from the sale shall be forfeited, pursuant to Sections 12159, 12160, 12161, and 12162.

(2) All shark or swordfish gill nets possessed by the permittee shall be seized and forfeited pursuant to Section 8630 or 12157.

(3) The shark or swordfish drift gill net permit shall be revoked by the director upon written findings pursuant to Section 8561.

(4) The commercial fishing license of the permittee shall be revoked and is forfeited pursuant to Section 12153.

(f) From July 15 of the year of issue to January 31, inclusive, of the following year, swordfish may be taken under a permit issued pursuant to this article.

SEC. 6. Section 8583 of the Fish and Game Code is amended to read:

8583. This article shall remain in effect only until January 1, 1995, and as of that date is repealed unless a later enacted statute which is enacted before January 1, 1995, deletes or extends that date.

SEC 7 Section 8585 2 of the Fish and Game Code is amended to read:

8585.2. Notwithstanding Sections 8394 and 8603, and except as provided in Section 8561 or 8563, shark or swordfish may not be taken for commercial purposes with drift gill nets except under a nontransferable, revocable limited entry experimental swordfish permit issued annually by the department. These permits shall be revoked or suspended by the director upon a conviction of a willful violation of this article, or violation of any condition of the permit by the permittee or the permittee's agent, servant, employee, or person acting under the permittee's direction or control.

SEC. 8. Section 8586.2 of the Fish and Game Code is amended to read:

8586 2. (a) The department shall issue and not more 35 permits under this article for any given year.

(b) If more than 35 qualified persons submit certified applications to the department in 1984, the department shall randomly draw names of applicants from the qualified applications submitted to the department. To certify an application under this subdivision, the applicant shall first satisfy the requirements of subdivisions (a) and (b) of Section 8586.1. Before the department issues any permit under this subdivision, an applicant shall also satisfy the requirement of subdivision (c) of Section 8586.1, within six months after his or her application is drawn pursuant to this subdivision.

(c) After January 1, 1985, the department shall reissue permits under this article to persons holding a permit issued in the previous year under this article which has not been revoked, after receipt of

a certified application therefor within the period prescribed in subdivision (a) of Section 8585.6. To certify an application under this subdivision, the applicant shall first have satisfied all of the requirments of Section 8586.1 and, additionally, during one of the two immediately preceding permit years, the applicant has landed at least 2,500 pounds of swordfish or 1,000 pounds of shark or landed shark or swordfish for which the permittee was paid at least one thousand dollars ($1,000). Landing shall be verified by the applicant's submission of landing receipts made pursuant to Section 8011.

(d) Any person, who possessed a valid limited entry experimental swordfish permit during the preceding season and whose application was denied because the person failed to meet the landing requirements specified in subdivision (c), may appeal to the director, submitting circumstances surrounding nonuse of the permit. The director shall authorize the reissuance of a permit if it is found and determined that the nonuse of the permit was for reasons beyond the control of the applicant under the circumstances.

(e) The director shall establish conditions for the reissuance of a permit if a permittee's limited entry experimental swordfish permit was previously revoked during the preceding season or if a permittee, who possessed a valid limited entry experimental swordfish permit during the preceding season, did not apply for renewal of the permit on or before April 30.

(f) If the department receives fewer than 35 applications pursuant to subdivision (c), the department shall hold a random drawing from certified applications received within the period prescribed in subdivision (b) of Section 8585.6. To certify an application under this subdivision, the applicant shall first satisfy the requirements in subdivisions (a) and (b) of Section 8586.1. Before the department issues any permit under this subdivision, the applicant shall also satisfy the requirement in subdivision (c) of Section 8586.1 within six months after his or her application is drawn pursuant to this subdivision.

SEC. 9. Section 8586.7 of the Fish and Game Code is amended to read:

8586.7. (a) Drift gill nets shall not be used to take shark or swordfish from February 1 to April 30, inclusive.

(b) Drift gill nets shall not be used to take shark or swordfish in ocean waters within 75 nautical miles from the mainland coastline between the westerly extension of the California-Oregon boundary line and the westerly extension of the United States-Republic of Mexico boundary line from May 1 to July 14, inclusive.

(c) Subdivisions (a) and (b) apply to any drift gill net used pursuant to a permit issued under Section 8585.2.

(d) Notwithstanding the closure from May 1 to July 14, inclusive, in subdivision (b), a permittee may land swordfish or thresher shark taken in ocean waters more than 75 nautical miles from the mainland coastline in that period if, for each landing during that closed period,

the permittee signs a written declaration under penalty of perjury that the fish landed were taken more than 75 nautical miles from the mainland coastline.

(e) If any person is convicted of falsely swearing a declaration under subdivision (d), in addition to any other penalty prescribed by law, the following penalties shall be imposed:

(1) The fish landed shall be forfeited or, if sold, the proceeds from the sale shall be forfeited, pursuant to Sections 12159, 12160, 12161, and 12162.

(2) All shark or swordfish gill nets possessed by the permittee shall be seized and forfeited pursuant to Section 8630 or 12157.

(3) The limited entry experimental swordfish permit shall be revoked by the director upon written findings pursuant to Section 8585.2.

(4) The commercial fishing license of the permittee shall be revoked and is forfeited pursuant to Section 12153.

(f) From July 15 of the year of issue to January 31, inclusive, of the following year, swordfish may be taken under a permit issued pursuant to this article.

SEC. 10. Section 8589 of the Fish and Game Code is amended to read:

8589. This article shall remain in effect only until January 1, 1995, and as of that date is repealed unless a later enacted statute which is enacted before January 1, 1995, deletes or extends that date.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1309

An act to amend Sections 12932, 12940, 12942, and 12988 of, and to repeal Chapter 2 (commencing with Section 12910) of Part 2.8 of Title 2 of, the Government Code, relating to fair employment and housing.

[Approved by Governor October 1, 1989. Filed with Secretary of State October 2, 1989]

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

SECTION 1. Chapter 2 (commencing with Section 12910) of Part 2.8 of Title 2 of the Government Code is repealed.

SEC. 2. Section 12932 of the Government Code is amended to read:

12932. (a) The Legislature recognizes that the avoidance of discriminatory practices in the employment of disabled persons is most effectively achieved through the ongoing efforts of state agencies involved in the vocational rehabilitation and job placement of the disabled. The department may utilize the efforts and experience of the Department of Rehabilitation in the development of job opportunities for the disabled by requesting the Department of Rehabilitation to foster good will and to conciliate on employment policies with employers who, in the judgment of the department, have employment practices or policies that discriminate against disabled persons. Nothing contained in this paragraph shall be construed to transfer any of the functions, powers, or duties from the department to the Department of Rehabilitation.

(b) The activities of the department in providing conciliation assistance shall be conducted in confidence and without publicity, and the department shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held.

(c) No employee of the department shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he or she acted on behalf of the department. Any employee of the department, who makes public in any manner whatever any information in violation of this subdivision, is guilty of a misdemeanor and, if a member of the state civil service, shall be subject to disciplinary action under the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2).

(d) When contacted by the department, employers, labor organizations, or employment agencies shall be informed whether a particular discussion, or portion thereof, constitutes either of the following:

(1) Endeavors at conference, conciliation, and persuasion which may not be disclosed by the department or received in evidence in any formal hearing or court action.

(2) Investigative processes, which are not so protected.

SEC. 3. 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 which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(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. 4. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, 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 disabled employee, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of a physically disabled employee, where the employee, because of his or her physical disability, 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 do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, 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 disability, 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 disability, 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 disability, 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 which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities

(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) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, 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.

(2) This subdivision is declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) (A) 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.

(B) Notwithstanding subparagraph (A), for purposes of this

subdivision, "employer" does not include a religious association or corporation not organized for private profit.

(4) For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926.

(5) 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. 5. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, 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 disabled employee, or subject an employer to any legal liability resulting from the refusal to employ,

or the discharge of, a physically disabled employee, where the employee, because of his or her physical disability, 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 disability, 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 disability, 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 disability, 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 disability, 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 which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(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 disability, 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. 6. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, 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 disabled employee, or subject an employer to any legal liability resulting from the refusal to employ, or the discharge of, a physically disabled employee, where the employee, because of his or her physical disability, 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 do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, 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 disability, 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 disability, 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 disability, 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 which prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(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) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, 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.

(2) This subdivision is declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) (A) 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.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit.

(4) For other types of discrimination as enumerated in subdivision (a), an employer remains as defined in subdivision (c) of Section 12926.

(5) 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. 7. Section 12942 of the Government Code is amended to read:

12942. Every employer in this state shall permit any employee who indicates in writing a desire in a reasonable time and can demonstrate the ability to do so, to continue his or her employment beyond any retirement date contained in any private pension or retirement plan.

This employment shall continue so long as the employee demonstrates his or her ability to perform the functions of the job adequately and the employer is satisfied with the quality of work performed.

Any employee indicating this desire and continuing the employment shall give the employer written notice in reasonable time, of intent to retire or terminate when the retirement or termination occurs after the employee's retirement date

Nothing in this section or Section 12941 shall be construed to prohibit any of the following:

(a) To prohibit an institution of higher education, as defined by Section 1141(a) of Title 20 of the United States Code, from imposing a retirement policy for tenured faculty members, provided that the institution has a policy permitting reemployment of these individuals on a year-to-year basis

(b) To prohibit compulsory retirement of any employee who has attained 70 years of age and is a physician employed by a professional medical corporation, the articles or bylaws of which provide for compulsory retirement.

(c) To prohibit compulsory retirement of any employee who has attained 65 years of age and who for the two-year period immediately before retirement was employed in a bona fide executive or a high policymaking position, if that employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer for the employee, which equals in the aggregate at least twenty seven thousand dollars ($27,000).

SEC. 8. Section 12942 of the Government Code is amended to read:

12942. Every employer in this state shall permit any employee who indicates in writing a desire in a reasonable time and can demonstrate the ability to do so, to continue his or her employment beyond any retirement date contained in any private pension or retirement plan.

This employment shall continue so long as the employee demonstrates his or her ability to perform the functions of the job adequately and the employer is satisfied with the quality of work performed.

Any employee indicating this desire and continuing the employment shall give the employer written notice in reasonable time, of intent to retire or terminate when the retirement or termination occurs after the employee's retirement date.

Nothing in this section or Section 12941 shall be construed to prohibit any of the following:

(a) To prohibit an institution of higher education, as defined by Section 1141(a) of Title 20 of the United States Code, from imposing a retirement policy for tenured faculty members if the institution has a policy permitting reemployment of these individuals on a year-to-year basis.

(b) To prohibit compulsory retirement of any employee who has attained 70 years of age and is a physician employed by a professional medical corporation, the articles or bylaws of which provide for compulsory retirement.

(c) To prohibit compulsory retirement of any employee who has attained 65 years of age and who for the two-year period immediately before retirement was employed in a bona fide executive or a high policymaking position, if that employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer for the employee, which equals in the aggregate at least forty-four thousand dollars ($44,000).

SEC. 9. Section 12988 of the Government Code is amended to read:

12988. The commission and the department may engage in affirmative actions with owners in furtherance of the purpose of this part as expressed in Section 12920.

SEC. 10. (a) Section 4 of this bill incorporates amendments to Section 12940 of the Government Code proposed by both this bill and

AB 65. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 12940 of the Government Code, and (3) SB 1535 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 65, in which case Sections 3, 5, and 6 of this bill shall not become operative.

(b) Section 5 of this bill incorporates amendments to Section 12940 of the Government Code proposed by both this bill and SB 1535. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 12940 of the Government Code, (3) AB 65 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1535 in which case Sections 3, 4, and 6 of this bill shall not become operative.

(c) Section 6 of this bill incorporates amendments to Section 12940 of the Government Code proposed by this bill, AB 65, and SB 1535. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 12940 of the Government Code, (3) this bill is enacted after AB 65 and SB 1535, in which case Sections 3, 4, and 5 of this bill shall not become operative.

SEC. 11. Section 8 of this bill incorporates amendments to Section 12942 of the Government Code proposed by both this bill and AB 127. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 12942 of the Government Code, and (3) this bill is enacted after AB 127, in which case Section 7 of this bill shall not become operative.

CHAPTER 1310

An act to repeal Sections 19063.7 and 19063.9 of the Government Code, and to amend Sections 11320.2 and 11320.3 of the Welfare and Institutions Code, relating to public assistance.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 19063.7 of the Government Code is repealed.

SEC. 2. Section 19063.9 of the Government Code is repealed.

SEC. 3. Section 11320.2 of the Welfare and Institutions Code is amended to read:

11320.2. (a) County welfare departments shall administer this chapter, in a manner consistent with the provisions of this chapter and regulations adopted by the department in order to implement this chapter.

(b) Each county welfare department, with the cooperation of

community college districts, county offices of education, and local private industry councils established under Chapter 4 (commencing with Section 15030) of Division 8 of the Unemployment Insurance Code, shall design a package of services to be provided to participants receiving services under this article, that reflect available resources and local job market needs. A joint plan may be submitted by two or more consenting counties.

Each county plan shall include a participant and labor market needs assessment, to be revised annually, which shall specify all of the following:

(1) The full employment goal of the plan, which shall be the provision of unsubsidized employment for all county registrants subject to this article.

(2) An assessment of the county's current and projected unsubsidized employment needs.

(3) An inventory of services, including those specified in subdivision (c) of Section 11320, available to county residents.

(4) The amount and kind of services required to meet the full employment goal for all registrants.

(5) The amount and kind of services that will be used in the plan year.

(6) An assessment of what services are currently unavailable and needed, including child care services, to meet the full employment goal and a plan for developing the availability of these services within a reasonable period of time, including a proposed program budget.

(c) The county welfare department shall submit to the department a program budget proposal in conjunction with the county plan, as specified in this section. The budget proposal shall specify the costs associated with providing the range of services included in the plan in the most cost-effective manner. The budget proposal shall identify the amount of funds that the county expects to spend for each component and shall provide supporting detail regarding the caseloads anticipated in each component and the amount that will be spent for (1) county employees, by classification, (2) administrative support and overhead, and (3) contracted services and support. Prior to final approval of the county's plan, as specified in subdivision (f), the department shall notify each county of the amount of its allocation of funds to carry out the plan and the assumptions used to develop that allocation. If the allocation is less than the amount of funds that the county proposed in the program budget, the department shall notify the county that the proposed program budget exceeds the funds available. The department shall specify how the costs proposed by the county exceed the costs used to develop the county's allocation. The county may provide any additional documentation to justify the higher funding level. If, after reviewing the additional information, the department finds that the proposed program costs are not reasonable or cost-effective, the county shall submit the necessary revisions to its plan and program budget to keep program expenditures within the amount of its

allocation.

In subsequent years, the county welfare department shall submit its program budget proposal for this article at the same time as the county submits its administrative cost control plan for the Aid to Families with Dependent Children, Medi-Cal, and Food Stamp programs. If services are not available in the county, the county plan may include provisions for the purchase of services from other counties.

The plan shall be approved by the board of supervisors of each county, after a public hearing is held in accordance with existing county public hearing procedures that provide adequate notice and an opportunity for affected groups and individuals to present their views and suggestions. In approving the plan, the board shall consider the views presented by affected groups during, and as part of the record of, the public hearing.

Prior to implementation, each plan must receive approval by the department. In determining whether a plan should be approved, the department shall consider the projected long-range cost-effectiveness of the plan, in addition to the appropriateness of the services proposed to be delivered under the plan, given the local labor market, maximum utilization of existing and generic services, and administrative ease.

No plan shall be approved by the department that does not provide an adequate range of services as described in Section 11320.3. With respect to large counties, as defined by the department for cost control purposes, "an adequate range of services" means that the counties shall provide all of the services outlined in Section 11320.3.

If two or more counties submit a joint plan, and the joint plan serves a participant caseload equal to or greater than a large county, the plan shall provide for all of the services outlined in Section 11320.3. If the services listed in Section 11320.3 are not provided for in the county plan, the county shall submit a justification as to why the services are not necessary No plan shall be approved which requires job search and work experience of participants to the exclusion of a range of services and which does not specify the range of services, both existing and proposed to be offered participants, in accordance with this section.

No funds appropriated for purposes of this article shall be used to fund education or training services in any county plan if these services could reasonably be provided by local educational agencies from Section A or Section B of the State School Fund which are not otherwise committed. No local educational agency shall be authorized to receive funds appropriated for purposes of this article unless it has demonstrated that it has fully committed all the funds from Section A or Section B of the State School Fund available to it, as certified by the district to the Chancellor of California Community Colleges, or the Superintendent of Public Instruction. The Chancellor of the California Community Colleges and the Superintendent of Public Instruction, as appropriate, shall certify

this information to the Director of Finance.

(d) In order to measure the effectiveness of county plans under this article, performance standards for this article shall be consistent with those developed for service delivery areas pursuant to Division 8 (commencing with Section 15000) of the Unemployment Insurance Code. The Health and Welfare Agency shall insure that these standards include, but are not limited to all of the following goals:

(1) The training program participants for unsubsidized employment.

(2) Reducing welfare costs by increasing earnings of program participants in unsubsidized employment.

(3) Placement in unsubsidized employment resulting from all program components.

(e) (1) A county plan may also provide that the program provided for in this article shall apply to recipients of aid under Part 5 (commencing with Section 17000), except that no funds appropriated for purposes of this article shall be utilized for purposes of applying this article to these individuals. A county plan may also provide that the program provided for in this article shall apply to refugees receiving Refugee Cash Assistance or assistance under Article 1 (commencing with Section 13200) of Chapter 5.2. The county shall maintain separate accounting records of expenditures related to applicants for, and recipients of, aid under this chapter, and for the individuals to whom the program applies pursuant to this subdivision. If a county elects to apply the program provided for in this article to refugees receiving Refugee Cash Assistance or assistance under Article 1 (commencing with Section 13200) of Chapter 5.2 or to refugee recipients of aid under Part 5 (commencing with Section 17000), costs of applying the program shall be funded from the county's federal social services and targeted assistance allocation as provided for under Chapter 5.5 (commencing with Section 13275).

(2) If, pursuant to paragraph (1), a county elects to apply the program provided for in this article to refugees or to recipients of aid under Part 5 (commencing with Section 17000), these individuals shall have the same rights, duties, and responsibilities that a participant has who is an applicant for, or a recipient of, aid under this chapter. Any participation by general assistance recipients shall not constitute any actual or implied responsibility for, or assumption of, costs of general assistance by the state.

(3) A county plan, with the approval of the director, may also provide for concurrent enrollment of participants in any program components provided in subdivisions (c) and (d) of Section 11320.3 which have been requested by the participant at the orientation and appraisal interview provided in subdivision (b) of Section 11320.5. Notwithstanding paragraphs (2), (3), and (4) of subdivision (b) of Section 11320.5, participation in job search or job club shall not be required prior to assignment to concurrent enrollment if the county

determines the participant lacks basic skills, language skills, or employment skills necessary to be employed in the local labor market on jobs that do not result in net loss of income as provided in subdivision (*l*) of Section 11320.7. For purposes of Section 11320.6, basic education as described in paragraph (6) of subdivision (b) of Section 11320.5 shall be considered the primary program component. It is the intent of the Legislature that concurrent enrollment plans approved under this paragraph be designed to encourage completion of the basic education requirements of this program. The department shall compare and evaluate the effectiveness of concurrent and sequential enrollment in program components.

(f) Each county shall submit its plan to the department within two years from the effective date of this article, as added during the 1985–86 Regular Session. The department shall approve a county plan within a reasonable period of time after submission of the county plan. Notwithstanding subdivision (f), a county may phase in the participation in its program for all qualified persons over a period of up to three years from the date upon which the program commences to operate in the county. A county may incorporate into its plan any existing employment or training program for applicants for, or recipients of, aid under this chapter which is operating in the county to the extent that the program is consistent with this article.

(g) This program shall be fully operational on a statewide basis within three years after the effective date of this article, as added during the 1985–86 Regular Session, by which time the department shall approve all county plans.

(h) The department shall evaluate the program and shall collect data on program cost, caseload movement, and program outcomes, including data on all of the following:

(1) The numbers of voluntary and mandatory participants in each program component.

(2) The amount of time that each participant remains in each component and the types of services, including supportive services, each participant receives.

(3) The number of recipients in each component that move to each of the other components.

(4) The number of participants sanctioned as well as the amount and duration of the sanction, the reason for the sanction, and the amount of time the participant was in the program prior to the sanction.

(5) The number of participants who go off aid, and to the extent possible, the reason they have gone off aid.

(6) The number of applicants who reapplied for and received aid after having gone off aid during the time they were participating in the program.

(7) The starting salary of employed participants.

(8) Participants job retention rates.

(9) The appropriateness of the categorization of participants.

(10) The appropriateness of assessments and employment plans.

(11) The appropriateness of preemployment preparation assignments, including a periodic review of the appropriateness of these assignments.

(12) The effectiveness of training components based upon the number of individuals placed in employment.

(13) The timeliness of preemployment preparation assignment reviews.

(14) The appropriateness of sanctions applied under this article.

The department may use standard statistical sampling methods to conduct the evaluation. The department shall maintain this data for the state and for each county. The department may contract with a qualified organization for the evaluation required by this section. The department shall submit a plan for implementing this evaluation to the Joint Legislative Budget Committee. To the extent possible, the data collection system for this evaluation shall be designed to collect data in the least expensive and least time-consuming manner possible.

Utilizing the data compiled pursuant to this subdivision, the department shall, commencing one year after the effective date of this article, as added during the 1985–86 Regular Session, annually report, by January 10, to the Legislature and the Governor on the effectiveness of the program provided for in this article. The Legislative Analyst shall submit a review of this report to the Legislature by April 15 of each year.

SEC. 4. Section 11320.3 of the Welfare and Institutions Code, as amended by Section 3.5 of Chapter 77 of the Statutes of 1989, is amended to read:

11320.3. (a) Each plan submitted pursuant to Section 11320.2 shall contain a methodology for the provision of job services, training and education, and supportive services to program participants. This methodology shall specify how county welfare departments will cooperate with, and maximize the use of, education, child care, resource and referral agencies, job service, and other appropriate local service providers. To the extent existing programs are available to county residents, each plan submitted pursuant to Section 11320.2 shall specify the manner in which these programs shall be utilized to provide services specified in this section. The county may provide services directly to program participants or enter into interagency agreements or contracts with private or public agencies for the provision of these services.

(b) Each county shall specify in its plan its target groups and the choices that shall be made available to each target group, pursuant to Section 11320.4. The county shall make available all of its programs to each target group, but may give priorities for certain programs to groups for whom these programs are reasonably expected to be the most effective.

(c) As provided in the contract entered into pursuant to Section 11320.5, job services shall include, but not be limited to, all of the following:

(1) Job club, which shall consist of both of the following:

(A) Job search workshops. These job search workshops shall be group training sessions where participants learn various job finding skills, including training in basic job seeking skills, job development skills, job interviewing skills, understanding employer requirements and expectations, and how to enhance self-esteem, self-image, and confidence.

(B) Supervised job search, which shall include, but not be limited to, access to phone banks in a clean and well-lighted place, job orders, direct referrals to employers, or other organized methods of seeking work which are overseen, reviewed, and criticized by a trained employment professional. The amount and type of activity required during this supervised job search period shall be determined by the county and the participant, based on the participant's employment history and need for supportive services, and shall be consistent with regulations developed by the department.

(2) Unsupervised job search. The individual shall seek work in his or her own way, and make periodic progress reports no less frequently than every two weeks to the county welfare department or the agency contracting with that department.

(3) Job placement, which shall include, but not be limited to, referrals to jobs listed by employers with the State Job Service.

(4) Job development, which shall be active assistance in seeking employment provided to a participant by a trained employment professional on a one-to-one basis.

(5) Employment counseling, which shall be counseling aimed at helping a person reach an informed decision on an appropriate employment goal.

(6) Notwithstanding any other provision of this article, participation in job search activities shall be limited to eight weeks in any 12 consecutive month period, except that an additional eight weeks of job search activities shall be allowed if it is required in conjunction with other education, training, or employment activity. This paragraph is intended to implement the limitations contained in the Family Support Act of 1988 (P.L 100-485), and shall not be construed to permit job search activities that are not specifically provided for elsewhere in this article.

(d) As provided in the contract entered into pursuant to Section 11320.5, training and education services include, but are not limited to, all of the following:

(1) Job training, which shall include, but is not limited to, training in employer-specific job skills in a classroom or onsite setting, including training provided by local private industry council programs and community colleges.

(2) Preemployment preparation shall be work for a public or nonprofit agency that provides the participant with either of the following:

(A) Basic preemployment preparation, which shall provide work behavior skills and a reference for future unsubsidized employment.

(B) Advanced preemployment preparation, which shall provide on-the-job enhancement of existing participant skills in a position related to a participant's experience, training, or education acquired as a result of the services funded pursuant to a contract entered into pursuant to Section 11320.5.

A short-term preemployment preparation assignment shall be for not longer than three months, and may be provided as a preparation for other education and training services as a part of the contract amendments pursuant to subdivisions (d) and (e) of Section 11320.5. A long-term preemployment preparation assignment shall not exceed one year.

(C) Except for persons subject to subparagraph (D), the number of hours a person participates in a preemployment preparation program shall be determined by dividing his or her aid grant under this chapter, less any child support paid to the county, by the average hourly wage for all job orders placed with the Employment Development Department. The average hourly wage shall be updated annually every July 1. No preemployment preparation assignment shall exceed 32 hours per week.

(D) If a person participates in a preemployment preparation assignment for nine months, the number of hours that person is required to participate shall be recomputed by the county welfare department. Beginning in the 10th month, the number of hours of preemployment preparation shall be determined by dividing a person's aid grant under this chapter, less any child support paid to the county, by the prevailing rate of pay for the same or similar job at the site to which the person is assigned. In no case shall the prevailing rate of pay fall below the average hourly wage for job orders placed with the Employment Development Department, as provided in subparagraph (C). No preemployment preparation assignment shall exceed 32 hours per week.

(3) Adult basic education, which shall be preemployment basic education, including reading, writing, and arithmetic necessary for employment or job training, including high school proficiency.

(4) College and community college education, when that education provides sufficient employment skills training that can reasonably be expected to lead to employment

(5) Vocational English-as-a-second-language which shall be intensive instruction in English for non-English speaking participants, coordinated with specific job training.

(6) Grant diversion.

(7) Supported work.

(8) Transitional employment.

For purposes of paragraph (6), "grant diversion" means public or private sector employment or on-the-job training at comparable wage rates, in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to the employer as a wage subsidy subsequent to the payment of wages to the participant.

For purposes of paragraphs (7) and (8), "supported work or transitional employment" means a form of grant diversion in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to an intermediary service provider subsequent to the payment of wages to the participant.

Grant diversion, supported work, and transitional employment projects shall be administered so that the recipient shall not receive less disposable income than if he or she had not participated in the project. "Disposable income" means the income available to the recipient by adding the aid payment acquired pursuant to this chapter and earnings from the grant diversion project and subtracting the allowable employment related expenses

The grant, a portion of the grant, or the estimated savings due to the earnings from a grant diversion project may be diverted into a special fund created by the county welfare department for this purpose. An employer may be reimbursed from the special fund pursuant to a contract developed by the county welfare department or the service delivery area with the employer.

The county shall obtain agreements with employers that participants will be employed upon successful completion of the grant diversion, supported work, or transitional employment period in any related job openings, and that employers will not discriminate against participants on the basis of race, sex, national origin, age, or disability. Except as provided in subdivision (b) of Section 11320.6, there shall be no interruption in receipt of income, whether wages from the employer or aid payments by the department, caused by an employer's conduct. No grant diversion, supported work, or transitional employment program shall be implemented under this article until a plan for such a program is approved by the department. No plan for grant diversion, supported work, or transitional employment programs shall be approved if the plan would jeopardize federal financial participation. Standards established by the department for purposes of these programs shall not preclude a significant portion of recipients from participation.

A plan submitted under this subparagraph shall include provisions for immediate reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, which has been lost due to fraud, malfeasance, or theft on the part of the employer or intermediary. This plan shall also include provisions for reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, when the recipient is determined to have had good cause for declining to participate pursuant to Section 11320.7. In the event that funds are lost due to fraud, malfeasance, or theft by an employer, the county shall initiate an action to recover from the employer or intermediary any of those funds.

(e) As provided in the contract pursuant to Section 11320.5, supportive services shall include, but are not limited to, all of the following:

(1) Child care. Paid child care shall be available to every

participant with a child under 12 years of age who needs it in order to participate in the program component to which he or she is assigned.

(2) Transportation costs shall be paid for every participant to and from his or her job or training assignment.

(3) Ancillary expenses, which shall include the cost of books, tools, clothing, fees, and other necessary costs of a work or training assignment.

(4) Personal counseling. A participant who has personal or family problems that would affect the outcome of the employment plan entered into pursuant to Section 11320.5 shall, to the extent available, receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

(f) Payments for supportive services, as described in subdivision (e), shall be advanced to the participant, wherever necessary, and when desired by the participant, so that the participant need not use his or her funds to pay for these services.

If the participant is working in unsubsidized employment after having participated in this program, child care shall be available for a transition period of not less than three months. If the participant is working in unsubsidized employment after having participated in this program, coverage under the Medi-Cal program shall also be provided for a transition period consistent with federal requirements.

The cost of support services, including reimbursement to licensed day care providers, shall be governed by regional market rates. Reimbursement to child care providers shall not exceed the fee charged to private clients for the same service. Participants shall be allowed to choose legal child care and the cost of that child care shall be reimbursed by counties if the cost is within the regional market rate. The regional market rate means care costing no more than 1.5 market standard deviations above the mean cost of care for that region. Reimbursement shall be made at a rate lower than that charged to private clients for the same service if the child care program agrees to charge a lower fee. Reimbursement shall be made on a per month, per week, per day, or per hour basis depending upon the basis used to charge private clients for the same service. For purposes of this section, regional market rates shall be determined in accordance with resource and referral programs provided for under Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code, and the Alternative Payment Program provided for under Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code. Participant plans shall include immediate referrals to local resource and referral agencies. The department shall use the State Department of Education sliding scale fee schedule for participants receiving child care. Day care by family members shall be encouraged, but the choice between licensed or exempt day care arrangements shall be made by the recipient.

(g) Each county welfare department shall be encouraged to contract with existing service providers for any or all child care services arrangements. If the county welfare department elects to contract with any child care provider which is also under contract with the State Department of Education, these contracts shall be consistent with, and shall not supersede, all of the following:

(1) Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code.

(2) Applicable provisions of Title 5 and Title 22 of the California Code of Regulations.

(3) Applicable State Department of Education contract provisions.

(h) In order to provide maximum choice to parents, and to ensure the availability of child care, each county shall do all of the following:

(1) Assist participants to locate child care during and after participation under this article.

(2) Allow and promote parent choice by providing flexibility in child care arrangements and establishing payment arrangements, as necessary, to meet the cost of licensed or exempt child care settings.

(3) Assist in the development of new child care capacity, where needed.

(4) Provide for the continuity of child care during the participant's postprogram transition period consistent with subdivision (f).

(5) Provide services to meet the child care needs of all children in the participant's family up to the age of 12 years.

(6) Provide child care to participants whose program demands flexible hours of care including evening, weekends, and split shifts.

(7) To the extent possible provide for transportation of children from school to care, if reasonable and necessary.

The county may contract with the public and private child care programs to provide any or all of the services specified in this subdivision.

(i) Resource and referral programs shall assist the county welfare departments to determine the child care needs of Greater Avenues for Independence participants, provide them with a listing of available child care services in the service area, and facilitate the efforts of county welfare departments, school districts, local child care providers and parent groups for the expansion of child care services.

(j) If the county welfare department or a contractor pays for child care services which are exempt from licensure, all of the following information about the care giver shall be on file with the county welfare department or the contractor and shall be made available to the participant:

(1) The name and address of the care provider.

(2) The address where care is to be provided.

(3) The hours care is to be provided and the charge for this care.

(4) The names, addresses, and telephone numbers of two

character references.

(5) A copy of a valid California driver's license or other identification to establish that the caregiver is at least 18 years old.

(6) A statement from the caregiver as to his or her health education, experience or other qualification, criminal record, and names and ages of other persons in the home or providing care.

(k) The department, under the direction of the Health and Welfare Agency, the Chancellor's office of the California Community Colleges, and the State Department of Education shall each develop and implement regulations whereby any payment for services from funds appropriated for the purposes of this article and delivered pursuant to subdivision (d) by an entity contracting with a county shall be made in accordance with a competitively selected fixed unit price performance-based contract. Under these contracts, full payment shall not be considered earned until either of the following has occurred:

(1) The participant has successfully completed the education program.

(2) The participant has successfully completed the job training program and has been retained in unsubsidized employment for at least 180 days.

Up to 70 percent of the fixed unit price for job training may be paid upon placement. At least 30 percent of the fixed unit price for job training shall be withheld for the followup during the 180-day retention period. Progress payments shall be made from this portion upon evidence of job retention at 30, 90, and 180 days. A pro rata share of the 70 percent payment shall be paid to the training provider if the participant fails to complete the training.

(*l*) Whenever a plan entered into pursuant to Section 11320.5 provides for the use of education services provided for in subdivision (d), utilization of each education program component shall not exceed two academic years.

(m) 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 11320.3 of the Welfare and Institutions Code, as added by Section 4 of Chapter 77 of the Statutes of 1989, is amended to read:

11320.3. (a) Each plan submitted pursuant to Section 11320.2 shall contain a methodology for the provision of job services, training and education, and supportive services to program participants. This methodology shall specify how county welfare departments will cooperate with, and maximize the use of, education, child care, resource and referral agencies, job service, and other appropriate local service providers. To the extent existing programs are available to county residents, each plan submitted pursuant to Section 11320.2 shall specify the manner in which these programs shall be utilized to provide services specified in this section. The county may provide services directly to program participants or enter into interagency

agreements or contracts with private or public agencies for the provision of these services.

(b) Each county shall specify in its plan its target groups and the choices that shall be made available to each target group, pursuant to Section 11320.4. The county shall make available all of its programs to each target group, but may give priorities for certain programs to groups for whom these programs are reasonably expected to be the most effective.

(c) As provided in the contract entered into pursuant to Section 11320.5, job services shall include, but not be limited to, all of the following:

(1) Job club, which shall consist of both of the following:

(A) Job search workshops. These job search workshops shall be group training sessions where participants learn various job finding skills, including training in basic job seeking skills, job development skills, job interviewing skills, understanding employer requirements and expectations, and how to enhance self-esteem, self-image, and confidence.

(B) Supervised job search, which shall include, but not be limited to, access to phone banks in a clean and well-lighted place, job orders, direct referrals to employers, or other organized methods of seeking work which are overseen, reviewed, and criticized by a trained employment professional. The amount and type of activity required during this supervised job search period shall be determined by the county and the participant, based on the participant's employment history and need for supportive services, and shall be consistent with regulations developed by the department.

(2) Unsupervised job search. The individual shall seek work in his or her own way, and make periodic progress reports no less frequently than every two weeks to the county welfare department or the agency contracting with that department.

(3) Job placement, which shall include, but not be limited to, referrals to jobs listed by employers with the State Job Service.

(4) Job development, which shall be active assistance in seeking employment provided to a participant by a trained employment professional on a one-to-one basis.

(5) Employment counseling, which shall be counseling aimed at helping a person reach an informed decision on an appropriate employment goal.

(d) As provided in the contract entered into pursuant to Section 11320.5, training and education services include, but are not limited to, all of the following:

(1) Job training, which shall include, but is not limited to, training in employer-specific job skills in a classroom or onsite setting, including training provided by local private industry council programs and community colleges.

(2) Preemployment preparation shall be work for a public or nonprofit agency that provides the participant with either of the following:

(A) Basic preemployment preparation, which shall provide work behavior skills and a reference for future unsubsidized employment.

(B) Advanced preemployment preparation, which shall provide on-the-job enhancement of existing participant skills in a position related to a participant's experience, training, or education acquired as a result of the services funded pursuant to a contract entered into pursuant to Section 11320.5.

A short-term preemployment preparation assignment shall be for not longer than three months. and may be provided as a preparation for other education and training services as a part of the contract amendments pursuant to subdivisions (d) and (e) of Section 11320.5. A long-term preemployment preparation assignment shall not exceed one year. The number of hours a person participates in a preemployment preparation program shall be determined by adding his or her aid grant under this chapter, less any child support paid to the county, and his or her food stamp allotment and dividing by the average hourly wage for all job orders placed with the Employment Development Department. The average hourly wage shall be updated annually every July 1. No preemployment preparation assignment shall exceed 32 hours per week.

(3) Adult basic education, which shall be preemployment basic education, including reading, writing, and arithmetic necessary for employment or job training, including high school proficiency.

(4) College and community college education, when that education provides sufficient employment skills training that can reasonably be expected to lead to employment.

(5) Vocational English-as-a-second-language which shall be intensive instruction in English for non-English speaking participants, coordinated with specific job training.

(6) Grant diversion.

(7) Supported work.

(8) Transitional employment.

For purposes of paragraph (6), "grant diversion" means public or private sector employment or on-the-job training at comparable wage rates, in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to the employer as a wage subsidy subsequent to the payment of wages to the participant.

For purposes of paragraphs (7) and (8), "supported work or transitional employment" means a form of grant diversion in which the recipient's cash grant, or a portion thereof, or the welfare grant savings from employment, is diverted to an intermediary service provider subsequent to the payment of wages to the participant.

Grant diversion, supported work, and transitional employment projects shall be administered so that the recipient shall not receive less disposable income than if he or she had not participated in the project. "Disposable income" means the income available to the recipient by adding the aid payment acquired pursuant to this chapter and earnings from the grant diversion project and

subtracting the allowable employment related expenses.

The grant, a portion of the grant, or the estimated savings due to the earnings from a grant diversion project may be diverted into a special fund created by the county welfare department for this purpose. An employer may be reimbursed from the special fund pursuant to a contract developed by the county welfare department or the service delivery area with the employer.

The county shall obtain agreements with employers that participants will be employed upon successful completion of the grant diversion, supported work, or transitional employment period in any related job openings, and that employers will not discriminate against participants on the basis of race, sex, national origin, age, or disability. Except as provided in subdivision (b) of Section 11320 6, there shall be no interruption in receipt of income, whether wages from the employer or aid payments by the department, caused by an employer's conduct. No grant diversion, supported work, or transitional employment program shall be implemented under this article until a plan for such a program is approved by the department. No plan for grant diversion, supported work, or transitional employment programs shall be approved if the plan would jeopardize federal financial participation. Standards established by the department for purposes of these programs shall not preclude a significant portion of recipients from participation.

A plan submitted under this subparagraph shall include provisions for immediate reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, which has been lost due to fraud, malfeasance, or theft on the part of the employer or intermediary. This plan shall also include provisions for reissuance to the recipient of any grant or portion of a grant paid to an employer or intermediary, when the recipient is determined to have had good cause for declining to participate pursuant to Section 11320.7. In the event that funds are lost due to fraud, malfeasance, or theft by an employer, the county shall initiate an action to recover from the employer or intermediary any of those funds.

(e) As provided in the contract pursuant to Section 11320.5, supportive services shall include, but are not limited to, all of the following:

(1) Child care. Paid child care shall be available to every participant with a child under 12 years of age who needs it in order to participate in the program component to which he or she is assigned.

(2) Transportation costs shall be paid for every participant to and from his or her job or training assignment.

(3) Ancillary expenses, which shall include the cost of books, tools, clothing, fees, and other necessary costs of a work or training assignment.

(4) Personal counseling. A participant who has personal or family problems that would affect the outcome of the employment plan entered into pursuant to Section 11320.5 shall, to the extent available,

receive necessary counseling or therapy to help him or her and his or her family adjust to his or her job or training assignment.

(f) Payments for supportive services, as described in subdivision (e), shall be advanced to the participant, wherever necessary, and when desired by the participant, so that the participant need not use his or her funds to pay for these services.

If the participant is working in unsubsidized employment after having participated in this program, child care shall be available for a transition period of not less than three months. If the participant is working in unsubsidized employment after having participated in this program, coverage under the Medi-Cal program shall also be provided for a transition period consistent with federal requirements.

The cost of support services, including reimbursement to licensed day care providers, shall be governed by regional market rates. Reimbursement to child care providers shall not exceed the fee charged to private clients for the same service. Participants shall be allowed to choose legal child care and the cost of that child care shall be reimbursed by counties if the cost is within the regional market rate. The regional market rate means care costing no more than 1.5 market standard deviations above the mean cost of care for that region. Reimbursement shall be made at a rate lower than that charged to private clients for the same service if the child care program agrees to charge a lower fee. Reimbursement shall be made on a per month, per week, per day, or per hour basis depending upon the basis used to charge private clients for the same service For purposes of this section, regional market rates shall be determined in accordance with resource and referral programs provided for under Article 2 (commencing with Section 8210) of Chapter 2 of Part 6 of the Education Code, and the Alternative Payment Program provided for under Article 3 (commencing with Section 8220) of Chapter 2 of Part 6 of the Education Code. Participant plans shall include immediate referrals to local resource and referral agencies. The department shall use the State Department of Education sliding scale fee schedule for participants receiving child care. Day care by family members shall be encouraged, but the choice between licensed or exempt day care arrangements shall be made by the recipient.

(g) Each county welfare department shall be encouraged to contract with existing service providers for any or all child care services arrangements. If the county welfare department elects to contract with any child care provider which is also under contract with the State Department of Education, these contracts shall be consistent with, and shall not supersede, all of the following:

(1) Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code.

(2) Applicable provisions of Title 5 and Title 22 of the California Code of Regulations.

(3) Applicable State Department of Education contract

provisions.

(h) In order to provide maximum choice to parents, and to ensure the availability of child care, each county shall do all of the following:

(1) Assist participants to locate child care during and after participation under this article.

(2) Allow and promote parent choice by providing flexibility in child care arrangements and establishing payment arrangements, as necessary, to meet the cost of licensed or exempt child care settings.

(3) Assist in the development of new child care capacity, where needed.

(4) Provide for the continuity of child care during the participant's postprogram transition period consistent with subdivision (f).

(5) Provide services to meet the child care needs of all children in the participant's family up to the age of 12 years.

(6) Provide child care to participants whose program demands flexible hours of care including evening, weekends, and split shifts.

(7) To the extent possible provide for transportation of children from school to care, if reasonable and necessary.

The county may contract with the public and private child care programs to provide any or all of the services specified in this subdivision.

(i) Resource and referral programs shall assist the county welfare departments to determine the child care needs of Greater Avenues for Independence participants, provide them with a listing of available child care services in the service area, and facilitate the efforts of county welfare departments, school districts, local child care providers and parent groups for the expansion of child care services.

(j) If the county welfare department or a contractor pays for child care services which are exempt from licensure, all of the following information about the caregiver shall be on file with the county welfare department or the contractor and shall be made available to the participant:

(1) The name and address of the care provider.

(2) The address where care is to be provided.

(3) The hours care is to be provided and the charge for this care.

(4) The names, addresses, and telephone numbers of two character references.

(5) A copy of a valid California driver's license or other identification to establish that the care giver is at least 18 years old.

(6) A statement from the caregiver as to his or her health education, experience or other qualification, criminal record, and names and ages of other persons in the home or providing care.

(k) The department, under the direction of the Health and Welfare Agency, the Chancellor's office of the California Community Colleges, and the State Department of Education shall each develop and implement regulations whereby any payment for services from funds appropriated for the purposes of this article and

delivered pursuant to subdivision (d) by an entity contracting with a county shall be made in accordance with a competitively selected fixed unit price performance-based contract. Under these contracts, full payment shall not be considered earned until either of the following has occurred:

(1) The participant has successfully completed the education program.

(2) The participant has successfully completed the job training program and has been retained in unsubsidized employment for at least 180 days.

Up to 70 percent of the fixed unit price for job training may be paid upon placement. At least 30 percent of the fixed unit price for job training shall be withheld for the followup during the 180-day retention period. Progress payments shall be made from this portion upon evidence of job retention at 30, 90, and 180 days. A pro rata share of the 70 percent payment shall be paid to the training provider if the participant fails to complete the training.

(*l*) Whenever a plan entered into pursuant to Section 11320.5 provides for the use of education services provided for in subdivision (d), utilization of each education program component shall not exceed two academic years.

(m) This section shall become operative on January 1, 1991.

CHAPTER 1311

An act relating to community colleges, and making an appropriation therefor.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. The sum of one hundred fifty thousand dollars ($150,000) is hereby appropriated from the General Fund to the Board of Governors of the California Community Colleges for allocation to "Recording for the Blind" in support of the program to loan taped educational books to blind, visually impaired, and learning disabled students in the California Community Colleges who meet either the registration requirements of Recording for the Blind or have been determined to have a verified disability in accordance with regulations adopted by the Board of Governors of the California Community Colleges. The Chancellor of the California Community Colleges shall enter into a contract with Recording for the Blind to ensure appropriate accountability for the use of these funds.

CHAPTER 1312

An act to amend Section 803 of the Penal Code, relating to crimes.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 of this code or Section 556 of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), or Chapter 6.8 (commencing

with Section 25300) of Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of the Health and Safety Code, or under Section 386.

(f) Notwithstanding any other limitation of time described in this section, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 17 years of age, that the child is a victim of a crime described in Sections 261, 286, 288, 288a, or 289

For purposes of this subdivision, a "responsible adult" or "agency" means a person or agency required to report pursuant to Section 11166. This subdivision shall only apply if:

(1) The limitation period specified in Section 800 or 801 has expired, and

(2) The defendant has committed at least one violation of Section 261, 286, 288, 288a, or 289, against the same victim within the limitation period specified for that crime in either Section 800 or 801.

CHAPTER 1313

An act to add Chapter 3.5 (commencing with Section 5730) to Part 2 of Division 5 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Chapter 3.5 (commencing with Section 5730) is added to Part 2 of Division 5 of the Welfare and Institutions Code, to read:

CHAPTER 3.5. MENTAL HEALTH MASTER PLAN DEVELOPMENT ACT

5730. This act is to be known as the Mental Health Master Plan Development Act.

5731. The Legislature finds and declares that the mental health system is a large and important segment of California's system of health care. The Legislature further finds and declares all of the following:

(a) Public Law 99-660 requires that the State Department of Mental Health develop a state plan for the Short-Doyle mental health system which includes all of the following:

(1) Plans developed in response to federal planning requirements shall be submitted to the Legislature.

(2) Evidence of broad participation from concerned citizens and mental health consumers.

(3) An analysis of the needs of seriously and persistently mentally ill adults, severely emotionally disturbed children and homeless mentally ill in California.

(4) Improvements in the mental health delivery system are needed for seriously mentally ill adults, severely emotionally disabled children, and homeless mentally ill.

(5) Given the existing mental health funding base, priorities need to be established for the Short-Doyle community mental health system.

(6) There is no minimum range of treatment services which should be available in every county in California.

(7) Most funding formulas for state mental health programs are not client based.

(8) The state has a special responsibility for the care and treatment of seriously and persistently mentally ill adults, seriously emotionally disturbed minors, and homeless mentally ill who are the most vulnerable and who require consistent supportive services to meet their health and safety needs in the community

(9) Legislative action is required to ensure that a comprehensive policy is developed which addresses the critical problems and key issues currently facing the mental health system in California.

5732. (a) Given the requirements of Public Law 99-660 and the significant policy issues currently facing the mental health system in California, a master plan for mental health is required which integrates these planning and reform efforts and which establishes priorities for the service delivery system and analyzes critical policy issues.

(b) The California Planning Council's scope shall be expanded to include the development of the Mental Health Master Plan. This Mental Health Master Plan shall be distinct but compatible with the plan mandated by Public Law 99-660, the development and implementation of which is the responsibility of the State Department of Mental Health

(c) Therefore, the California Planning Council required by Public Law 99-660 shall be expanded to include the following members:

(1) The Speaker of the Assembly shall recommend to the Governor for appointment, one council member.

(2) The Assembly Minority Floor Leader shall recommend to the Governor for appointment, one council member.

(3) The President pro Tempore of the Senate shall recommend to the Governor for appointment, one council member

(4) The Senate Minority Floor Leader shall recommend to the Governor for appointment, one council member.

(5) The County Supervisors Association of California shall recommend to the Governor for appointment, one council member.

(d) The Mental Health Master Plan shall be completed and submitted to the Legislature and the Governor by October 1, 1991.

5733. The Mental Health Master Plan shall include, but not be limited to, an analysis of all of the following:

(a) The specific planning elements required by Public Law 99-660.

(b) Identification of priority populations to be served and a definition of those priority populations.

(c) Proposed methods of allocating resources which result in the most effective system of care possible for the priority populations.

(d) Proposed methods of evaluating the effectiveness of current service delivery methods and the populations which are best served by these models of care.

(e) Recommendations related to the governance and responsibilities of the state, county, or other administrative structures for the delivery of mental health programs which are cost-effective and provide the highest quality of care.

SEC. 2. The expanded role and responsibility of the California Planning Council is contingent upon the availability of federal funds appropriated for this purpose.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1314

An act to amend Sections 17052.17, 17052.18, 23617, and 23617.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 17052.17 of the Revenue and Taxation Code is amended to read:

17052.17. (a) For taxable years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of either or both of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services such as those which identify local child care services, offer information describing these resources to employees, and make referrals of employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers.

(2) The amount of costs paid or incurred for each taxable year which are eligible to be taken into account under subparagraph (A) or subparagraph (B), or both, of paragraph (1) shall not exceed one hundred thousand dollars ($100,000).

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation or acquisition of facilities for purposes of establishing or expanding onsite or near-site centers by one or more employers.

(d) With the exception of a husband and wife, if two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to partners' distributive share. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) (1) In the case where the credit allowed under subdivision (b) for the taxable year exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the next four years if necessary, until the credit has been exhausted.

(2) If the credit carryovers from preceding taxable years allowed under paragraph (1) plus the credit allowed for the taxable year under subdivision (b) would exceed an aggregate total of thirty thousand dollars ($30,000), then the credit allowed to reduce net tax under this section for the taxable year shall be limited to thirty thousand dollars ($30,000) and the amount in excess of the thirty thousand dollars ($30,000) limit may be carried over and applied against net tax for the next five succeeding taxable years in an amount which, when added to the credit allowed under subdivision (b) for that succeeding taxable year, does not exceed thirty thousand dollars ($30,000).

(f) No deduction shall be allowed as otherwise provided in this

part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 17250. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) (1) In order to be eligible for the credit allowed under subparagraph (A) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(j) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (e), until the credit has been exhausted.

SEC. 2. Section 17052.18 of the Revenue and Taxation Code is amended to read:

17052.18. (a) For taxable years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan and three hundred dollars ($300) for contributions to a part-time qualified care plan made on behalf of the employee's dependent.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care,

provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(3) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(5) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the next four years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) With the exception of a husband and wife, if two or more taxpayers share in the costs eligible for the credit provided by this

section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code, concerning substantial economic effect, relating to a partner's distributive share. In the case of a husband and wife who file a separate return, the credit may be taken by either or equally divided between them.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 2.5. Section 17052.18 of the Revenue and Taxation Code is amended to read:

17052.18. (a) For taxable years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan and three hundred dollars ($300) for contributions to a part-time qualified care plan made on behalf of the employee's dependent.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21 (b) (2) (D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "Full-time qualified care plan" means an average of eight or

more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(5) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(6) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the next four years, if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) With the exception of a husband and wife, if two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between

the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code, concerning substantial economic effect, relating to a partner's distributive share. In the case of a husband and wife who file a separate return, the credit may be taken by either or equally divided between them.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 3. Section 23617 of the Revenue and Taxation Code is amended to read:

23617. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of either or both of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services such as those which identify local child care services, offer information describing these resources to employees, and make referrals of employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers.

(2) The amount of costs paid or incurred for each income year which are eligible to be taken into account under subparagraph (A) or subparagraph (B), or both, of paragraph (1) shall not exceed one hundred thousand dollars ($100,000).

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or near-site centers by one or more employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code, concerning substantial economic effect, relating to a partner's

distributive share.

(e) (1) In the case where the credit allowed under subdivision (b) for the income year exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the next four years if necessary, until the credit has been exhausted.

(2) If the credit carryovers from preceding income years allowed under paragraph (1) plus the credit allowed for the income year under subdivision (b) would exceed an aggregate total of thirty thousand dollars ($30,000), then the credit allowed to reduce "tax" under this section for the income year shall be limited to thirty thousand dollars ($30,000) and the amount in excess of the thirty thousand dollars ($30,000) limit may be carried over and applied against the "tax" for the next five succeeding income years in an amount which, when added to the credit allowed under subdivision (b) for that succeeding income year, does not exceed thirty thousand dollars ($30,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 24371.5. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) (1) In order to be eligible for the credit allowed under subparagraph (A) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(j) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided under subdivision (e), until the credit has been exhausted.

SEC. 4. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any income year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan and three hundred dollars ($300) for contributions to a part-time qualified care plan made on behalf of the employee's dependent.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, and in-home care or home-provider care, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(3) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(5) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the next four years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(k) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code, concerning substantial economic effect, relating to a partner's distributive share.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided under subdivision (f), until the credit has been exhausted.

SEC. 4.5. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any income year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan and three hundred dollars ($300) for contributions to a part-time qualified care plan made on behalf of the employee's dependent.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21 (b) (2) (D) of

the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor programs associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(5) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(6) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401 (c) (1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the next four years, if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(k) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code, concerning substantial economic effect, relating to a partner's distributive share.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 5. Sections 2.5 and 3.5 of this bill incorporate amendments to Sections 17052.18 and 23617.5, respectively, of the Revenue and Taxation Code proposed by this bill and AB 446. They shall become operative only if (1) both bills are enacted and become effective before January 1, 1990, (2) each bill amends the above sections of the Revenue and Taxation Code, and (3) this bill is enacted after AB 446, in which case the above sections of the Revenue and Taxation Code, as amended by AB 446, shall remain operative only until the operative date of this bill, at which time Sections 2.5 and 3.5 of this bill shall become operative, and Sections 2 and 3 of this bill shall not become operative.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1315

An act to amend Section 199.715 of the Health and Safety Code, relating to AIDS.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 199.715 of the Health and Safety Code is amended to read:

199.715. The state department may approve up to 35 pilot projects to provide housing and food for homeless persons who have AIDS or ARC. The state department may provide funding to a selected number these pilot projects. All approved pilot projects shall enter into a contract with the state department, which shall define the conditions for participation as pilot projects. Notwithstanding Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2, an approved pilot project shall not be required to be licensed if it is organized and operated for the purpose of providing room and board to homeless persons with AIDS or ARC and it is not organized and operated to directly provide medical or nursing care.

The pilot projects shall maintain a written agreement for referral and acceptance of residents with at least one registered nurse case manager, general acute care hospital, and licensed home health agency. The contract requirements for the pilot projects shall include the criteria and protocols which the state department determines are appropriate to assure that the health, safety, and welfare of residents are protected. The state department may additionally provide for or enter into a contract for evaluation and assessment related to the approved pilot projects.

This chapter shall not preempt the application of any local zoning requirements in effect on January 1, 1990, to a residential AIDS shelter pilot project for homeless persons with AIDS or ARC.

The implementation of these pilot projects 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.

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 1316

An act to amend Sections 290 and 987.2 of, and to add Section 288.2 to, the Penal Code, relating to crimes.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 288.2 is added to the Penal Code, to read:

288.2. (a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of the minor, with the intent, or for the purpose of seducing the minor, is guilty of a public offense punishable by imprisonment in the state prison or in the county jail.

Upon the second and each subsequent conviction for a violation of this subdivision, a person so convicted is guilty of a felony.

(b) It shall be a defense to any prosecution under this section that a parent or guardian committed the act charged in aid of legitimate sex education.

(c) It shall be a defense in any prosecution under this section that the act charged was committed in aid of legitimate scientific or educational purposes.

(d) It does not constitute a violation of this section for a telephone corporation, as defined by Section 234 of the Public Utilities Code, to carry or transmit messages described in this section or perform related activities in providing telephone services.

SEC. 2. 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 647.6 or former Section 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 felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 Youthful Offender Parole Board, 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. 2.1. 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 647.6 or former Section 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 felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; 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, 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, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(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 or agencies 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 or agencies, 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 or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 (1) a statement in writing signed by the person, giving such 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 or agencies 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 or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies 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 or agencies having local jurisdiction of the new place of residence.

(g) (1) 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.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in the county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph 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.

(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 Youthful Offender Parole Board, 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 or agencies. 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. 2.2. 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, 288.5, 289, or 647.6 or former Section 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 felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; 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, 288.5, 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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, 288.5, 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 Youthful Offender Parole Board, 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. 2.3. 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, 288.5, 289, or 647.6 or former Section 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 felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the

above-mentioned offenses; 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, 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, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(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 or agencies 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 or agencies 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 or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 (1) a statement in writing signed by the person, giving such 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 or agencies 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 or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies 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 or agencies having local jurisdiction of the new place of residence.

(g) (1) 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, 288.5, 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.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in the county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph 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 guilt or nolo contendere or by trial by the court sitting without a jury.

(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 Youthful Offender Parole Board, 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 or agencies. 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. 2.5. Section 987.2 of the Penal Code is amended to read:

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel and in which counsel is assigned in the superior court, municipal court, or justice court to represent the person in a criminal trial, proceeding or appeal, the assigned counsel: (1) in a county or city and county in which there is no public defender; (2) in a county of the first or second class where there is no contract for criminal defense services between the county and one or more responsible attorneys; (3) in a case in which the court finds that because of a conflict of interest or other reasons the public defender has properly refused; or (4) in a county of the first or second class where attorneys contracted by the county are unable to represent the person accused, shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of

the general fund of the county.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in such cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to insure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first or second class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that such public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which such counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(f) Counsel shall be appointed to represent, in the municipal or justice court, a person who desires but is unable to employ counsel, when it appears that such appointment is necessary to provide an adequate and effective defense for the defendant.

(g) As used in this section, "county of the first or second class" means the county of the first class and county of the second class as provided by Section 28022 of the Government Code as amended by Chapter 43 of the Statutes of 1961 and Sections 28020 and 28023 of the

Government Code as amended by Chapter 1204 of the Statutes of 1977.

SEC. 2.6. (a) Section 2.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and SB 203. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 290 of the Penal Code, (3) AB 2212 is not enacted amending Section 290 of the Penal Code, and (4) this bill is enacted after SB 203, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 2212. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 290 of the Penal Code, (3) SB 203 is not enacted amending Section 290 of the Penal Code, and (4) this bill is enacted after AB 2212, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, SB 203, and AB 2212. It shall only become operative if (1) all three bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after SB 203 and AB 2212, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 3. 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.

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

CHAPTER 1317

An act to add Sections 69504.6 and 71007.1 to the Government Code, relating to courts.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 69504.6 is added to the Government Code, to read:

69504.6. (a) Notwithstanding any other provisions of law, the clerk of the superior court may record on electronic imaging

equipment pleadings, motions, instruments, books, depositions, transcripts, minute orders, and any other material on file with the superior court. A duplicate copy of any record reproduced and certified by the clerk of the court, which is in compliance with standards developed by the National Institute of Standards and Technology, shall be deemed an original. No additions, deletions, or changes to an original record stored on electronic imaging equipment are permitted.

(b) The originals of all papers and records copied as provided in subdivision (a) may be destroyed in conformity with Section 69503. The reproduced copies shall be deemed to be the original records of the court.

SEC. 1.5. Section 69504.6 is added to the Government Code, to read:

69504.6. (a) Notwithstanding any other provisions of law, the clerk of the superior court may record on microform as defined in Section 69503, including electronic imaging equipment, pleadings, motions, instruments, books, depositions, transcripts, minute orders, and any other material on file with the superior court. A duplicate copy of any record reproduced on electronic imaging equipment and certified by the clerk of the court, which is in compliance with standards developed by the National Institute of Standards and Technology, shall be deemed an original. No additions, deletions, or changes to an original record stored on microform, including electronic imaging equipment are permitted.

(b) The originals of all papers and records copied as provided in subdivision (a) may be destroyed in conformity with Section 69503. The reproduced copies shall be deemed to be the original records of the court.

SEC. 2. Section 71007.1 is added to the Government Code, to read:

71007.1. (a) Notwithstanding any other provision of law, the clerk of the municipal or justice court may record, at any time, on electronic imaging equipment pleadings, motions, instruments, books, depositions, transcripts, minute orders, complaints, dockets, registers of action, and any other records which are part of the court file or lodged with the municipal or justice court. A duplicate copy of any record reproduced and certified by the clerk of the court, which is in compliance with standards developed by the National Institute of Standards and Technology, shall be deemed an original. No additions, deletions, or changes to an original record stored on electronic imaging equipment are permitted.

(b) The originals of all papers and records copied as provided in subdivision (a) may be destroyed in conformity with Section 71008. The reproduced copies shall be deemed to be the original records of the court.

SEC. 2.5. Section 71007.1 is added to the Government Code, to read:

71007.1. (a) Notwithstanding any other provision of law, the

clerk of the municipal or justice court may record, at any time, on microform as defined in Section 69503, including electronic imaging equipment, pleadings, motions, instruments, books, depositions, transcripts, minute orders, complaints, dockets, registers of action, and any other records which are part of the court file or lodged with the municipal or justice court. A duplicate copy of any record reproduced on electronic and certified by the clerk of the court, which is in compliance with standards developed by the National Institute of Standards and Technology, shall be deemed an original. No additions, deletions, or changes to an original record stored on microform, including electronic imaging equipment are permitted.

(b) The originals of all papers and records copied as provided in subdivision (a) may be destroyed in comformity with Section 71008. The reproduced copies shall be deemed to be the original records of the court.

SEC. 3. Sections 1.5 and 2.5 of this act shall only become operative if (1) both this bill and AB 796 are enacted and become effective on January 1, 1990, and (2) this bill is enacted after AB 796, in which case Sections 1 and 2 of this bill shall not become operative.

CHAPTER 1318

An act to amend Section 9409 of the Welfare and Institutions Code, relating to aging.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 9409 of the Welfare and Institutions Code is amended to read:

9409. This chapter shall remain in effect so long as a waiver pursuant to Section 1396n (c) of Title 42 of the United States Code has been granted by the Department of Health and Human Services to the State Department of Health Services, or until the state establishes a new local long-term care delivery system pursuant to the Torres-Felando Long-Term Care Reform Act (Chapter 1453 of the Statutes of 1982).

CHAPTER 1319

An act to amend Section 1203.2 of the Penal Code, relating to probation.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1203.2 of the Penal Code is amended to read:

1203.2. (a) At any time during the probationary period of a person released on probation under the care of a probation officer pursuant to this chapter, or of a person released on conditional sentence or summary probation not under the care of a probation officer, if any probation officer or peace officer has probable cause to believe that the probationer is violating any term or condition of his or her probation or conditional sentence, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation, has become abandoned to improper associates or a vicious life, or has subsequently committed other offenses, regardless whether he or she has been prosecuted for such offenses. However, probation shall not be revoked for failure of a person to make restitution pursuant to Section 1203.04 as a condition of probation unless the court determines that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent with a person's ability to pay. The revocation, summary or otherwise, shall serve to toll the running of the probationary period.

(b) Upon its own motion or upon the petition of the probationer, probation officer or the district attorney of the county in which the probationer is supervised, the court may modify, revoke, or terminate the probation of the probationer pursuant to this subdivision. The court shall give notice of its motion, and the probation officer or the district attorney shall give notice of his or her petition to the probationer, his or her attorney of record, and the district attorney or the probation officer, as the case may be. The probationer shall give notice of his or her petition to the probation officer and notice of any motion or petition shall be given to the district attorney in all cases. The court shall refer its motion or the petition to the probation officer. After the receipt of a written report from the probation officer, the court shall read and consider the

report and either its motion or the petition and may modify, revoke, or terminate the probation of the probationer upon the grounds set forth in subdivision (a) if the interests of justice so require.

The notice required by this subdivision may be given to the probationer upon his or her first court appearance in the proceeding. Upon the agreement by the probationer in writing to the specific terms of a modification or termination of a specific term of probation, any requirement that the probationer make a personal appearance in court for the purpose of a modification or termination shall be waived. Prior to the modification or termination and waiver of appearance, the probationer shall be informed of his or her right to consult with counsel, and if indigent the right to secure court appointed counsel. If the probationer waives his or her right to counsel a written waiver shall be required. If probationer consults with counsel and thereafter agrees to a modification or termination of the term of probation and waiver of personal appearance, the agreement shall be signed by counsel showing approval for the modification or termination and waiver.

(c) Upon any revocation and termination of probation the court may, if the sentence has been suspended, pronounce judgment for any time within the longest period for which the person might have been sentenced. However, if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke the suspension and order that the judgment shall be in full force and effect. In either case, the person shall be delivered over to the proper officer to serve his or her sentence, less any credits herein provided for.

(d) In any case of revocation and termination of probation, including, but not limited to, cases in which the judgment has been pronounced and the execution thereof has been suspended, upon the revocation and termination, the court may, in lieu of any other sentence, commit the person to the Department of the Youth Authority if he or she is otherwise eligible for such commitment.

(e) If probation has been revoked before the judgment has been pronounced, the order revoking probation may be set aside for good cause upon motion made before pronouncement of judgment. If probation has been revoked after the judgment has been pronounced, the judgment and the order which revoked the probation may be set aside for good cause within 30 days after the court has notice that the execution of the sentence has commenced. If an order setting aside the judgment, the revocation of probation, or both is made after the expiration of the probationary period, the court may again place the person on probation for that period and with those terms and conditions as it could have done immediately following conviction.

CHAPTER 1320

An act to add Section 11752.7 to the Insurance Code, relating to insurance.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 11752.7 is added to the Insurance Code, to read:

11752.7. (a) A licensed rating organization may make available experience rating information contained in its records to any insurer admitted to transact workers' compensation insurance in this state or to any insurance agent or broker that is licensed to transact workers' compensation insurance in this state, if the insurer, agent, or broker submits a written request to the licensed rating organization stating all of the following:

(1) That the requesting insurer is admitted to transact workers' compensation insurance in this state, or that the requesting agent or broker is licensed to transact workers' compensation insurance in this state.

(2) The information requested.

(3) The information requested will be used to facilitate the transaction of workers' compensation insurance by the insurer, agent, or broker.

(4) The information received will not be released by the agent or broker to others, except to facilitate the transaction of workers' compensation insurance by the requesting agent or broker.

(b) The licensed rating organization may, but shall not be required to, verify that an insurer requesting information under this section is admitted to transact workers' compensation insurance in this state or that an insurance agent or broker requesting information under this section is licensed to transact workers' compensation insurance in this state.

(c) For purposes of this section:

(1) "Experience rating information" means information released on microfiche by a licensed rating organization which identifies all experience-rated employers, and the experience ratings and classifications or experience modifications which apply or applied to those employers.

(2) "Transaction," as applied to workers' compensation insurance, includes any of the following:

(A) Solicitation.

(B) Negotiations preliminary to execution of a contract of insurance.

(C) Execution of a contract of insurance.

(D) Resolution of matters arising out of the contract and

subsequent to its execution.

(d) Experience rating information made available pursuant to this section shall be confidential and shall not be used for any purpose other than to facilitate the transaction of workers' compensation insurance by the insurer, agent, or broker receiving the information pursuant to this section.

(e) Nothing in this section prohibits information services companies in the business of publishing or providing experience rating information immediately prior to September 15, 1989, from continuing on or after September 15, 1989, to receive and provide to others experience rating information from whatever sources and in whatever forms or media.

(f) No licensed rating organization, member of a licensed rating organization, 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 rating information pursuant to this section, or to the members of such organizations, or for the accuracy or completeness of the information disclosed.

(g) This section shall not be construed as implying the existence of liability in circumstances not defined in this section, nor as implying a legislative recognition that, except for the enactment of this section, a liability has existed or would exist in the circumstances stated in this section.

(h) 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 1321

An act relating to vehicles.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. The State Air Resources Board shall review and evaluate the adequacy of programs to reduce chlorofluorocarbon emissions from motor vehicle air conditioning systems, and report its findings to the Legislature not later than June 30, 1990.

In reporting its findings to the Legislature, the state board shall recommend any legislation it believes is needed to reduce chlorofluorocarbon emissions from motor vehicle air-conditioning systems, and propose a schedule of measures to reduce those

emissions. In considering these measures, the state board shall take into account steps already being taken to reduce chlorofluorocarbon emissions from motor vehicle air-conditioning systems.

CHAPTER 1322

An act to add Section 2802.5 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 2802.5 is added to the Vehicle Code, to read:

2802.5. (a) The Department of the California Highway Patrol, in cooperation with the Public Utilities Commission, the State Board of Equalization, the Department of Motor Vehicles, the Judicial Council, and other appropriate agencies, shall develop an interagency agreement under which the agencies shall assign one or more employees or interagency clerks at one or more commercial vehicle inspection facilities of the department which are open on a continuous basis. The employees or interagency clerks shall be assigned duties to perform on behalf of the state agencies which are a party to the agreement as specified in subdivision (b). However, in the case of the Judicial Council, the clerk shall perform duties on behalf of the clerk of the municipal court district in which the inspection facility is located.

(b) The employees or interagency clerks may issue registration permits for any of the state agencies which are parties to the interagency agreement, accept the payment of any fees due any of the state agencies, accept payment of bail or fines, set court dates, and perform other ministerial administrative functions for the state agencies or the municipal court district. The Department of the California Highway Patrol, in cooperation with the other state agencies, shall provide computerized equipment appropriate to identify the status of any vehicles or drivers passing through the inspection facility. The employees or interagency clerks shall accept payment by credit card. Assigned personnel may remain the employees of their respective agencies, or as may otherwise be provided by the interagency agreement. The interagency agreement shall provide for sharing of associated costs between participating agencies, based on the anticipated enhanced revenue collections.

(c) At the request of any peace officer, the employees or interagency clerks shall determine the status of any outstanding warrants and whether all fees due have been paid with respect to a driver or vehicle present at the inspection facility.

(d) A peace officer at the inspection facility may store or impound any vehicle upon determination that the vehicle or the driver of the vehicle has failed to pay registration, regulatory, fuel permit, or other fees, or has any outstanding warrants in any county in the state. The stored or impounded vehicle shall be released upon payment of those fees, fines, or the posting of bail. Upon request, the driver or owner of the vehicle may request a hearing to determine the validity of the seizure.

(e) The Department of the California Highway Patrol may implement this program as a demonstration pilot program at one or more locations. The department, on or before February 1, 1992, shall report its recommendations for continuation, expansion, or termination of the program to the Legislature. The report shall also include comments from the trucking industry concerning the benefits and problems in the program and any recommendations as a result of the pilot project. The report shall also consider the potential for ports of entry at major highway entry points to California, similar to programs already implemented in other states.

CHAPTER 1323

An act to add Section 65917.5 to the Government Code, relating to zoning.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

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

(a) It is the intent of the Legislature to encourage greater development of facilities by the private sector at points of employment concentration.

(b) It is the intent of the Legislature to encourage and foster a public and private cooperative approach to providing child care services in California communities.

(c) It is in the best interest of the state to develop and foster incentive driven programs to encourage commercial and industrial developers to provide children's centers, which can meet the needs of the city, including a charter city, city and county, or county.

(d) It is the intent of the Legislature to provide advisory guidelines which may be adopted by a city council, including a charter city council, city and county board of supervisors, or county board of supervisors, for floor area ratio bonuses as one approach in addressing the unmet need for child care services in California communities.

(e) It is in the best interest of the state to provide advisory

guidelines which assist in reducing travel time for families by increasing onsite child care facilities in developments such as business, industrial parks, and retail centers. It is also in the best interest of the state to create incentives for developers which will help to foster and attract business and tenants in new developments.

(f) It is the intent of the Legislature to provide guidelines for local jurisdictions and the private sector which will increase the number of facilities which are developed specifically for children that can enrich and nurture their physical and cognitive growth.

(g) It is further the intent of the Legislature that every city council, including a charter city council, city and county board of supervisors, or county board of supervisors, shall consider adopting the floor area ratio bonus guidelines into their local general plans.

SEC. 2. Section 65917.5 is added to the Government Code, to read:

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for any purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. Any penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to

this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for childcare services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998, by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

CHAPTER 1324

An act to amend, repeal, and add Section 66901 of, and to add Article 2.5 (commencing with Section 66914) to Chapter 11 of Part 40 of, the Education Code, relating to private postsecondary educational institutions.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 66901 of the Education Code is amended to read:

66901. There is hereby created the California Postsecondary Education Commission, which shall be advisory to the Governor, the Legislature, other appropriate governmental officials, and institutions of postsecondary education. The commission shall be composed of the following members:

(a) One representative of the Regents of the University of California designated by the regents, one representative of the Trustees of the California State University designated by the trustees, and one representative of the Board of Governors of the California Community Colleges designated by the board. Representatives of the regents, the trustees, and the board of governors shall be chosen from among the appointed members of their respective boards, but in no instance shall an ex officio member of a governing board serve on the commission.

(b) One representative of the independent California colleges and universities which are accredited by a national or regional

association which is recognized by the United States Department of Education. This member shall be appointed by the Governor from a list or lists submitted by an association or associations of those institutions.

(c) The chair or the designee of the chair of the Council for Private Postsecondary Educational Institutions.

(d) The President of the State Board of Education or his or her designee from among the other members of the board.

(e) Nine representatives of the general public appointed as follows: three by the Governor, three by the Senate Rules Committee, and three by the Speaker of the Assembly. It is the intent of the Legislature that the commission be broadly and equitably representative of the general public in the appointment of its public members and that the appointing authorities, therefore, shall confer to assure that their combined appointments include adequate representation on the basis of sex and on the basis of the significant racial, ethnic, and economic groups in the state.

No person who is employed by any institution of public or private postsecondary education shall be appointed to or serve on the commission, except that a person who is not a permanent, full-time employee and who has part-time teaching duties which do not exceed six hours per week may be appointed to and serve on the commission.

The commission members designated in subdivisions (a), (c), and (d) shall serve at the pleasure of their respective appointing authorities. The member designated in subdivision (b) shall serve a three-year term. The members designated in subdivision (e) shall each serve a six-year term. The respective appointing authority may appoint an alternate for each member who may, during the member's absence, serve on the commission and vote on matters before the commission. When vacancies occur prior to expiration of terms, the respective appointing authority may appoint a member for the remainder of the term.

Any person appointed pursuant to this section may be reappointed to serve additional terms.

Any person appointed pursuant to this section who no longer has the position which made him or her eligible for appointment may nonetheless complete his or her term of office on the commission.

No person appointed pursuant to this section shall, with respect to any matter before the commission, vote for or on behalf of, or in any way exercise the vote of, any other member of the commission.

The commission shall meet as often as it deems necessary to carry out its duties and responsibilities.

Any member of the commission who in any calendar year misses more than one-third of the meetings of the full commission forfeits his or her office, thereby creating a vacancy.

The commission shall select a chair from among the members representing the general public. The chair shall hold office for a term of one year and may be selected to successive terms.

There is established an advisory committee to the commission and the director, consisting of the chief executive officers of each of the public segments, or their designees, the Superintendent of Public Instruction or his or her designee, and an executive officer from each of the groups of institutions designated in subdivisions (b) and (c) to be designated by the respective commission representative from these groups. Commission meeting agenda items and associated documents shall be provided to the committee in a timely manner for its consideration and comments.

The commission may appoint any subcommittees or advisory committees it deems necessary to advise the commission on matters of educational policy. The advisory committees may consist of commission members or nonmembers, or both, including students, faculty members, segmental representatives, governmental representatives, and representatives of the public.

The commission shall appoint and may remove a director in the manner hereinafter specified. The director shall appoint persons to any staff positions the commission may authorize.

The commission shall prescribe rules for the transaction of its own affairs, subject, however, to all the following requirements and limitations:

(1) The votes of all representatives shall be recorded.

(2) Effective action shall require the affirmative vote of a majority of all the duly appointed members of the commission, not including vacant commission seats.

(3) The affirmative votes of two-thirds of all the duly appointed members of the commission, not including vacant commission seats, shall be necessary to the appointment of the director.

(f) This section shall remain in effect until June 30, 1990, and as of that date is repealed.

SEC. 2. Section 66901 is added to the Education Code, to read:

66901. There is hereby created the California Postsecondary Education Commission, which shall be advisory to the Governor, the Legislature, other appropriate governmental officials, and institutions of postsecondary education. The commission shall be composed of the following members:

(a) One representative of the Regents of the University of California designated by the regents, one representative of the Trustees of the California State University designated by the trustees, and one representative of the Board of Governors of the California Community Colleges designated by the board. Representatives of the regents, the trustees, and the board of governors shall be chosen from among the appointed members of their respective boards, but in no instance shall an ex officio member of a governing board serve on the commission.

(b) One representative of the independent California colleges and universities which are accredited by a national or regional association which is recognized by the United States Department of Education. This member shall be appointed by the Governor from

a list or lists submitted by an association or associations of those institutions.

(c) The chair or the designee of the chair of the Council for Private Postsecondary and Vocational Education.

(d) The President of the State Board of Education or his or her designee from among the other members of the board.

(e) Nine representatives of the general public appointed as follows: three by the Governor, three by the Senate Rules Committee, and three by the Speaker of the Assembly. It is the intent of the Legislature that the commission be broadly and equitably representative of the general public in the appointment of its public members and that the appointing authorities, therefore, shall confer to assure that their combined appointments include adequate representation on the basis of sex and on the basis of the significant racial, ethnic, and economic groups in the state.

No person who is employed by any institution of public or private postsecondary education shall be appointed to or serve on the commission, except that a person who is not a permanent, full-time employee and who has part-time teaching duties which do not exceed six hours per week may be appointed to and serve on the commission.

The commission members designated in subdivisions (a), (c), and (d) shall serve at the pleasure of their respective appointing authorities. The member designated in subdivision (b) shall serve a three-year term. The members designated in subdivision (e) shall each serve a six-year term. The respective appointing authority may appoint an alternate for each member who may, during the member's absence, serve on the commission and vote on matters before the commission. When vacancies occur prior to expiration of terms, the respective appointing authority may appoint a member for the remainder of the term.

Any person appointed pursuant to this section may be reappointed to serve additional terms.

Any person appointed pursuant to this section who no longer has the position which made him or her eligible for appointment may nonetheless complete his or her term of office on the commission.

No person appointed pursuant to this section shall, with respect to any matter before the commission, vote for or on behalf of, or in any way exercise the vote of, any other member of the commission.

The commission shall meet as often as it deems necessary to carry out its duties and responsibilities.

Any member of the commission who in any calendar year misses more than one-third of the meetings of the full commission forfeits his or her office, thereby creating a vacancy.

The commission shall select a chair from among the members representing the general public. The chair shall hold office for a term of one year and may be selected to successive terms.

There is established an advisory committee to the commission and the director, consisting of the chief executive officers of each of the

public segments, or their designees, the Superintendent of Public Instruction or his or her designee, and an executive officer from each of the groups of institutions designated in subdivisions (b) and (c) to be designated by the respective commission representative from these groups. Commission meeting agenda items and associated documents shall be provided to the committee in a timely manner for its consideration and comments.

The commission may appoint any subcommittees or advisory committees it deems necessary to advise the commission on matters of educational policy. The advisory committees may consist of commission members or nonmembers, or both, including students, faculty members, segmental representatives, governmental representatives, and representatives of the public.

The commission shall appoint and may remove a director in the manner hereinafter specified. The director shall appoint persons to any staff positions the commission may authorize.

The commission shall prescribe rules for the transaction of its own affairs, subject, however, to all the following requirements and limitations:

(1) The votes of all representatives shall be recorded.

(2) Effective action shall require the affirmative vote of a majority of all the duly appointed members of the commission, not including vacant commission seats.

(3) The affirmative votes of two-thirds of all the duly appointed members of the commission, not including vacant commission seats, shall be necessary to the appointment of the director.

(f) This section shall become operative on July 1, 1990.

SEC. 3. Article 2.5 (commencing with Section 66914) is added to Chapter 11 of Part 40 of the Education Code, to read:

Article 2.5. Review of National and Regional Postsecondary Accrediting Agencies

66914. (a) The commission, with the assistance of the Superintendent of Public Instruction, shall conduct an initial review of all national and regional accrediting agencies which accredit private postsecondary institutions doing business or seeking to do business in the state and shall report the results of the review to the Council for Private Postsecondary and Vocational Education and to the Legislature by December 31, 1990. This review shall determine all of the following:

(1) Whether the accrediting agency can demonstrate that its standards and procedures for the review of institutions encompass the standards and consumer protection requirements prescribed in Chapter 3 (commencing with Section 94300) of Part 59, as added by the Private Postsecondary and Vocational Education Reform Act of 1989, and that those standards are rigorously enforced. In the event that the commission determines that the accrediting agency is deficient in its standards, procedures for review, or the enforcement

mechanisms for the institutions under the accrediting agency's jurisdiction, the commission shall identify the deficiencies.

(2) The effectiveness of the accrediting agency in responding to consumer complaints, including those complaints forwarded to the accrediting agency by the council.

(b) Following the initial review of all national and regional accrediting agencies the commission shall periodically review these agencies every five years, or sooner upon the request of the Council for Private Postsecondary and Vocational Education. The commission may stagger the review procedure in a manner which allows one-fifth of the national and regional accrediting agencies to be reviewed each year. The commission shall report the findings of these periodic reviews to the council and the Legislature.

(c) The commission shall advise the Legislature and the Council for Private Postsecondary and Vocational Education whether it recommends that a regional or national accrediting agency's accreditation of a postsecondary educational institution should be utilized in lieu of part or all of the state licensing review by the council.

66915. (a) The commission, with the assistance of the Superintendent of Public Instruction, shall work in cooperation with the Council for Private Postsecondary and Vocational Education to prepare a preliminary draft of proposed regulations to implement the standards, procedures, and criteria prescribed in Chapter 3 (commencing with Section 94300) of Part 59, including all of the following:

(1) Policies for the administration of the Private Postsecondary and Vocational Education Reform Act of 1989.

(2) A procedure for the development and adoption of rules regulations, and procedures which are necessary or appropriate to conduct the work of the council.

(3) Minimum criteria for the approval of private postsecondary or vocational educational institutions to operate in the state and to award degrees and diplomas.

(4) A procedure for the approval of institutions which meet the prescribed criteria.

(b) The preliminary draft shall be delivered to the council on or before December 31, 1990.

SEC. 4. Sections 1 to 3, inclusive, of this act shall become operative only if Senate Bill 190 of the 1989–90 Regular Session is chaptered and becomes effective on or before January 1, 1990.

CHAPTER 1325

An act to amend Sections 25534, 25534.1, and 25536 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 25534 of the Health and Safety Code is amended to read:

25534. (a) After receiving an acutely hazardous material registration form filed pursuant to Section 25533, the administering agency shall make a preliminary determination whether there is a significant likelihood that the handler's use of an acutely hazardous material may pose an acutely hazardous materials accident risk.

(1) If the administering agency determines that there is a significant likelihood of risk pursuant to this subdivision it shall require the handler to prepare and to submit an RMPP in accordance with a timetable based on the priority ranking established in subdivision (b).

(2) If the administering agency determines that there is not a significant likelihood of risk pursuant to this subdivision, it may require the preparation and submission of an RMPP, but need not do so if it determines that the likelihood of an acutely hazardous materials accident risk is remote.

(b) The administering agency shall rank each use of an acutely hazardous material identified pursuant to paragraph (1) of subdivision (a) in terms of the relative risks associated with its use, should an acutely hazardous materials accident occur. The estimation of the relative risks posed by the use of an acutely hazardous material shall be based on worst case assumptions regarding the quantity and rate of release of the acutely hazardous material, air dispersion, toxicity, meteorological conditions, and other pertinent parameters. Based on the estimate of relative risks, the administering agency shall establish a timetable for the submission of the RMPP for the use of the acutely hazardous material.

(c) The RMPP shall be prepared within 12 months following the request made by the administering agency pursuant to this section. The RMPP shall include all of the following elements:

(1) A description of each accident involving acutely hazardous materials which has occurred at the business or facility within three years from the date of the request made pursuant to subdivision (a), together with a description of the underlying causes of the accident and the measures taken, if any, to avoid a recurrence of a similar accident.

(2) A report specifying the nature, age, and condition of the

equipment used to handle acutely hazardous materials at the business or facility and any schedules for testing and maintenance.

(3) Design, operating, and maintenance controls which minimize the risk of an accident involving acutely hazardous materials.

(4) Detection, monitoring, or automatic control systems to minimize potential acutely hazardous materials accident risks.

(5) A schedule for implementing additional steps to be taken by the business, in response to the findings of the assessment performed pursuant to subdivision (d), to reduce the risk of an accident involving acutely hazardous materials. These actions may include any of the following:

(A) Installation of alarm, detection, monitoring, or automatic control devices.

(B) Equipment modifications, repairs, or additions.

(C) Changes in the operations, procedures, maintenance schedules, or facility design.

(6) Auditing and inspection programs designed to allow the handler to confirm that the RMPP is effectively carried out.

(7) Recordkeeping procedures for the RMPP.

(d) The RMPP shall be based upon an assessment of the processes, operations, and procedures of the business, and shall consider all of the following:

(1) The results of a hazard and operability study which identifies the hazards associated with the handling of an acutely hazardous material due to operating error, equipment failure, and external events, which may present an acutely hazardous materials accident risk.

(2) For the hazards identified in the hazard and operability studies, an offsite consequence analysis which, for the most likely hazards, assumes pessimistic air dispersion and other adverse environmental conditions.

(e) The business shall submit to the administering agency any additional supporting technical information deemed necessary by the administering agency to clarify information submitted pursuant to subdivision (c).

(f) A handler shall maintain all records concerning an RMPP for a period of at least five years.

(g) The RMPP shall identify, by title, all personnel at the business who are responsible for carrying out the specific elements of the RMPP, and their respective responsibilities, and the RMPP shall include a detailed training program to ensure that those persons are able to implement the RMPP.

(h) The handler shall review the RMPP, and shall make necessary revisions to the RMPP at least every three years, but, in any event, within 60 days following a modification which would materially affect the handling of an acutely hazardous material.

(i) Any person who handles acutely hazardous materials and who owns or operates two or more business facilities which are substantially identical may prepare a single generic RMPP

applicable to all those facilities if the handling of the acutely hazardous materials is substantially similar at all of those facilities.

(j) The RMPP, and any revisions required by subdivision (h), shall be certified as complete by a qualified person and the facility operator.

(k) Except as specified in subdivision (d) of Section 25535, the handler shall implement all activities and programs specified in the RMPP within one year following the certification made pursuant to subdivision (j). Implementation of the RMPP shall include carrying out all operating, maintenance, monitoring, inventory control, equipment inspection, auditing, recordkeeping, and training programs as required by the RMPP. The administering agency may grant an extension of this deadline upon a showing of good cause.

(*l*) The Office of Emergency Services shall adopt, and publish for distribution, guidelines for the preparation and submission of an RMPP. In preparing the guidelines for hazard and operability studies, the office shall, at a minimum, base its procedural recommendations on those set forth in the 1985 Guidelines for Chemical Hazard Evaluation Procedures, prepared by the Center for Chemical Process Safety of the American Institute of Chemical Engineers.

SEC. 2. Section 25534 of the Health and Safety Code is amended to read:

25534. (a) After receiving an acutely hazardous material registration form filed pursuant to Section 25533, the administering agency shall make a preliminary determination whether there is a significant likelihood that the handler's use of an acutely hazardous material may pose an acutely hazardous materials accident risk.

(1) If the administering agency determines that there is a significant likelihood of risk pursuant to this subdivision, it shall require the handler to prepare and to submit an RMPP in accordance with a timetable based on the priority ranking established in subdivision (b).

(2) If the administering agency determines that there is not a significant likelihood of risk pursuant to this subdivision, it may require the preparation and submission of an RMPP, but need not do so if it determines that the likelihood of an acutely hazardous materials accident risk is remote.

(b) The administering agency shall rank each use of an acutely hazardous material identified pursuant to paragraph (1) of subdivision (a) in terms of the relative risks associated with its use, should an acutely hazardous materials accident occur. The estimation of the relative risks posed by the use of an acutely hazardous material shall be based on worst case assumptions regarding the quantity and rate of release of the acutely hazardous material, air dispersion, toxicity, meteorological conditions, and other pertinent parameters. Based on the estimate of relative risks, the administering agency shall establish a timetable for the submission of the RMPP for the use of the acutely hazardous

materials.

On or before January 1, 1991, the administering agency shall request the submission of an RMPP if the administering agency determines that the handler handles a significant quantity of acutely hazardous materials which may be instantly released into the atmosphere and the release would threaten the lives of the public.

(c) The RMPP shall be prepared within 12 months following the request made by the administering agency pursuant to this section. The RMPP shall include all of the following elements:

(1) A description of each accident involving acutely hazardous materials which has occurred at the business or facility within three years from the date of the request made pursuant to subdivision (a), together with a description of the underlying causes of the accident and the measures taken, if any, to avoid a recurrence of a similar accident.

(2) A report specifying the nature, age, and condition of the equipment used to handle acutely hazardous materials at the business or facility and any schedules for testing and maintenance.

(3) Design, operating, and maintenance controls which minimize the risk of an accident involving acutely hazardous materials.

(4) Detection, monitoring, or automatic control systems to minimize potential acutely hazardous materials accident risks.

(5) A schedule for implementing additional steps to be taken by the business, in response to the findings of the assessment performed pursuant to subdivision (d), to reduce the risk of an accident involving acutely hazardous materials. These actions may include any of the following:

(A) Installation of alarm, detection, monitoring, or automatic control devices.

(B) Equipment modifications, repairs, or additions.

(C) Changes in the operations, procedures, maintenance schedules, or facility design.

(6) Auditing and inspection programs designed to allow the handler to confirm that the RMPP is effectively carried out.

(7) Recordkeeping procedures for the RMPP.

(d) The RMPP shall be based upon an assessment of the processes, operations, and procedures of the business, and shall consider all of the following:

(1) The results of a hazard and operability study which identifies the hazards associated with the handling of an acutely hazardous material due to operating error, equipment failure, and external events, which may present an acutely hazardous materials accident risk.

(2) For the hazards identified in the hazard and operability studies, an offsite consequence analysis which, for the most likely hazards, assumes pessimistic air dispersion and other adverse environmental conditions.

(e) The business shall submit to the administering agency any additional supporting technical information deemed necessary by

the administering agency to clarify information submitted pursuant to subdivision (c).

(f) A handler shall maintain all records concerning an RMPP for a period of at least five years.

(g) The RMPP shall identify, by title, all personnel at the business who are responsible for carrying out the specific elements of the RMPP, and their respective responsibilities, and the RMPP shall include a detailed training program to ensure that those persons are able to implement the RMPP.

(h) The handler shall review the RMPP, and shall make necessary revisions to the RMPP at least every three years, but, in any event, within 60 days following a modification which would materially affect the handling of an acutely hazardous material.

(i) Any person who handles acutely hazardous materials and who owns or operates two or more business facilities which are substantially identical may prepare a single generic RMPP applicable to all those facilities if the handling of the acutely hazardous materials is substantially similar at all of those facilities.

(j) The RMPP, and any revisions required by subdivision (h), shall be certified as complete by a qualified person and the facility operator.

(k) Except as specified in subdivision (d) of Section 25535, the handler shall implement all activities and programs specified in the RMPP within one year following the certification made pursuant to subdivision (j). Implementation of the RMPP shall include carrying out all operating, maintenance, monitoring, inventory control, equipment inspection, auditing, recordkeeping, and training programs as required by the RMPP. The administering agency may grant an extension of this deadline upon a showing of good cause.

(*l*) The Office of Emergency Services shall adopt, and publish for distribution, guidelines for the preparation and submission of an RMPP. In preparing the guidelines for hazard and operability studies, the office shall, at a minimum, base its procedural recommendations on those set forth in the 1985 Guidelines for Chemical Hazard Evaluation Procedures, prepared by the Center for Chemical Process Safety of the American Institute of Chemical Engineers.

SEC. 3. Section 25534.1 of the Health and Safety Code is amended to read:

25534.1. Every RMPP prepared pursuant to Section 25534 shall give consideration to the proximity of the facility to schools, residential areas, general acute care hospitals, long-term health care facilities, and child day care facilities. For purposes of this section, "general acute care hospital" has the meaning provided by subdivision (a) of Section 1250, "long-term health care facility" has the meaning provided by subdivision (a) of Section 1418, and "child day care facility" has the meaning provided by Section 1596.750.

SEC. 4. Section 25536 of the Health and Safety Code is amended to read:

25536. (a) Any business, except as provided in subdivisions (b) and (c), which handles an acutely hazardous material or a mixture containing an acutely hazardous material which has a quantity at any one time equal to, or greater than, the threshold planning quantities listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations, shall submit a registration form pursuant to Section 25533.

(b) The administering agency, upon application by an owner or operator of a business, may exempt any business from any requirement of this article, upon a written finding that the exemption would not present an acutely hazardous materials accident risk. The administering agency shall specify in writing the basis for any exemption issued pursuant to this subdivision.

(c) Before placing additional requirements upon a business, the administering agency shall determine that the existing law or regulatory programs fail to substantially address and mitigate the purposes of this article.

(d) If the administering agency finds, and provides notice to, a business handling an acutely hazardous material in quantities less than those specified in subdivision (a), that the quantity limits specified in subdivision (a) should be decreased for that specific acutely hazardous material because of public health, safety, or environmental concerns, the administering agency may require the business to submit a registration form pursuant to Section 25533.

SEC. 5. Section 2 of this bill incorporates amendments to Section 25534 of the Health and Safety Code, proposed by both this bill and SB 1049. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 25534 of the Health and Safety Code, and (3) this bill is enacted after SB 1049, in which case Section 1 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 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 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1326

An act to amend Sections 11370.2 and 11370.4 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 1, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 11370.2 of the Health and Safety Code is amended to read:

11370.2. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, or for each prior felony conviction of conspiracy to violate one of those offenses, whether or not the prior conviction resulted in a term of imprisonment.

(b) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, or for each prior felony conviction of conspiracy to violate one of those offenses, whether or not the prior conviction resulted in a term of imprisonment.

(c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, or for each prior felony convicted of conspiracy to violate one of those offenses, whether or not the prior conviction resulted in a term of imprisonment.

(d) The enhancements provided for in this section shall be pleaded and proven as provided by law.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

SEC. 1.5. Section 11370.2 of the Health and Safety Code is amended to read:

11370.2. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(b) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(c) Any person convicted of a violation of, or of a conspiracy to violate, Section 11378 or 11379 with respect to any substance containing a controlled substance specified in paragraph (1) or (2) of subdivision (d) of Section 11055 shall receive, in addition to any other punishment authorized by law, including Section 667.5 of the Penal Code, a full, separate, and consecutive three-year term for each prior felony conviction of, or for each prior felony conviction of conspiracy to violate, Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or 11383, whether or not the prior conviction resulted in a term of imprisonment.

(d) The enhancements provided for in this section shall be pleaded and proven as provided by law.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

SEC. 2. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a) Any person convicted of a violation of, or of a conspiracy to violate, 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, or of a conspiracy to violate, 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) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(f) 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. 2.5. Section 11370.4 of the Health and Safety Code is amended to read:

11370 4. (a) Any person convicted of a violation of, or of a conspiracy to violate, 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.

The conspiracy enhancements provided for in this paragraph shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(b) Any person convicted of a violation of, or of conspiracy to violate, 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.

The conspiracy enhancements provided for in this paragraph shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(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. 3. Section 1.5 of this bill incorporates, in substantially the same form, amendments to Section 11370.2 of the Health and Safety Code proposed by both this bill and AB 2185. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 11370.2 of the Health and Safety Code, and (3) this bill is enacted after AB 2185, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates, in substantially the same form, amendments to Section 11370.4 of the Health and Safety Code proposed by both this bill and AB 2185. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 11370.4 of the Health and Safety Code, and (3) this bill is enacted after AB 2185, in which case Section 2 of this bill shall not become operative.

SEC. 5. This bill shall not become operative unless Assembly Bill 2185 of the 1989–90 Regular Session of the Legislature is also chaptered.

CHAPTER 1327

An act to amend Section 15026 of, and to add Section 15046.5 to, the Health and Safety Code, to amend Sections 1203.1e, 6025, and 6029 of, and to add Title 4.85 (commencing with Section 4497) to Part 3 of, the Penal Code, to amend Section 20134 of the Public Contract Code, to amend Sections 207.1 and 209 of, and to add Chapter 9 (commencing with Section 5590) to Part 1 of Division 5 of, the Welfare and Institutions Code, and to amend Sections 5 and 6.5 of Chapter 1519 of the Statutes of 1986, relating to corrections, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. The Legislature hereby finds and declares that it is necessary to exempt city, county, and city and county correctional treatment centers from the requirements of the Hospital Seismic Safety Act of 1983 because they are not intended to provide disaster services to the public at large in the event of an emergency.

SEC. 2. Section 15026 of the Health and Safety Code is amended to read·

15026. (a) (1) "Hospital building" includes any building not specified in subdivision (b) which is used, or designed to be used, for a health facility of a type required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) Except as provided in paragraph (9) of subdivision (b), hospital building includes a correctional treatment center, as defined in subdivision (k) of Section 1250, the construction of which was completed on or after March 7, 1973. This paragraph shall remain operative only until January 1, 1993.

(b) "Hospital building" does not include any of the following:

(1) Any building in which only outpatient clinic services are provided and which is separated from a building in which hospital

services are provided.

(2) Any building used, or designed to be used, for a skilled nursing facility or intermediate care facility if the building is of single-story, wood-frame or light steel frame construction.

(3) Any building of single-story, wood-frame or light steel frame construction in which only skilled nursing or intermediate care services are provided if the building is separated from a building housing other patients of the health facility receiving higher levels of care.

(4) Any freestanding structures of a chemical dependency recovery hospital exempted under the provisions of subdivision (c) of Section 1275.2.

(5) Any building licensed to be used as an intermediate care facility/developmentally disabled habilitative with six beds or less and any intermediate care facility/developmentally disabled habilitative of 7 to 15 beds which is a single-story, wood-frame or light steel frame building.

(6) Any building which has been used as a community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 and which was originally licensed to provide that level of care prior to March 7, 1973, if (A) the building complied with applicable building and safety standards at the time of that licensure, (B) the Director of Health Services, upon application, determines that in order to continue to properly serve the facility's existing client population, relicensure as an intermediate care facility/developmentally disabled will be required, and (C) a notice of intent to obtain a certificate of need was filed with the area health planning agency and the Office of Statewide Health Planning and Development on or before March 1, 1983. The exemption provided in this paragraph extends only to use of the building as an intermediate care facility/developmentally disabled.

(7) Any building which has been used as a community care facility pursuant to paragraph (1) or (2) of subdivision (a) of Section 1502 and which was originally licensed to provide that level of care if all of the following conditions are satisfied:

(A) The building complied with applicable building and safety standards for a community care facility at the time of that licensure.

(B) The facility conforms to the 1973 Edition of the Uniform Building Code of the International Conference of Building Officials as a community care facility.

(C) The facility is other than single story, but no more than two stories, and the upper story is licensed for ambulatory patients only.

(D) A certificate of need was granted prior to July 1, 1983, for conversion of a community care facility to an intermediate care facility.

(E) The facility otherwise meets all nonstructural construction standards for intermediate care facilities in existence on the effective date of this act or obtains waivers from the appropriate agency.

The exemption provided in this paragraph extends only to use of

the building as an intermediate care facility as defined in subdivision (d) of Section 1250 and the facility is in Health Facilities Planning Area 1420.

(8) Any building licensed as a correctional treatment center, as defined in subdivision (k) of Section 1250, the construction of which was completed prior to March 7, 1973. This paragraph shall remain operative only until January 1, 1993.

(9) Any building licensed as a correctional treatment center, as defined in subdivision (k) of Section 1250, operated by a city, city and county, or county.

SEC. 2.5. Section 15026 of the Health and Safety Code is amended to read:

15026. (a) (1) "Hospital building" includes any building not specified in subdivision (b) which is used, or designed to be used, for a health facility of a type required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) Except as provided in paragraph (9) of subdivision (b), hospital building includes a correctional treatment center, as defined in subdivision (k) of Section 1250, the construction of which was completed on or after March 7, 1973. This paragraph shall remain operative only until January 1, 1993.

(b) "Hospital building" does not include any of the following:

(1) Any building in which outpatient clinic services are provided and which is separated from a building in which hospital services are provided. If any one or more outpatient clinic service in the building provides services to inpatients, the building shall not be included as a "hospital building" if those services provided to inpatients represent no more than 25 percent of the total outpatient services provided at the building. Hospitals shall maintain on an ongoing basis, data on the patients receiving services in these buildings, including the number of patients seen, categorized by their inpatient or outpatient status. Hospitals shall submit this data annually to the State Department of Health Services.

(2) Any building used, or designed to be used, for a skilled nursing facility or intermediate care facility if the building is of single-story, wood-frame or light steel frame construction.

(3) Any building of single-story, wood-frame or light steel frame construction in which only skilled nursing or intermediate care services are provided if the building is separated from a building housing other patients of the health facility receiving higher levels of care.

(4) Any freestanding structures of a chemical dependency recovery hospital exempted under the provisions of subdivision (c) of Section 1275.2.

(5) Any building licensed to be used as an intermediate care facility/developmentally disabled habilitative with six beds or less and any intermediate care facility/developmentally disabled habilitative of 7 to 15 beds which is a single-story, wood-frame or light steel frame building.

(6) Any building which has been used as a community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 and which was originally licensed to provide that level of care prior to March 7, 1973, if (A) the building complied with applicable building and safety standards at the time of that licensure, (B) the Director of Health Services, upon application, determines that in order to continue to properly serve the facility's existing client population, relicensure as an intermediate care facility/developmentally disabled will be required, and (C) a notice of intent to obtain a certificate of need was filed with the area health planning agency and the Office of Statewide Health Planning and Development on or before March 1, 1983. The exemption provided in this paragraph extends only to use of the building as an intermediate care facility/developmentally disabled.

(7) Any building which has been used as a community care facility pursuant to paragraph (1) or (2) of subdivision (a) of Section 1502 and which was originally licensed to provide that level of care if all of the following conditions are satisfied:

(A) The building complied with applicable building and safety standards for a community care facility at the time of that licensure.

(B) The facility conforms to the 1973 Edition of the Uniform Building Code of the International Conference of Building Officials as a community care facility

(C) The facility is other than single story, but no more than two stories, and the upper story is licensed for ambulatory patients only.

(D) A certificate of need was granted prior to July 1, 1983, for conversion of a community care facility to an intermediate care facility.

(E) The facility otherwise meets all nonstructural construction standards for intermediate care facilities in existence on the effective date of this act or obtains waivers from the appropriate agency.

The exemption provided in this paragraph extends only to use of the building as an intermediate care facility as defined in subdivision (d) of Section 1250 and the facility is in Health Facilities Planning Area 1420.

(8) Any building licensed as a correctional treatment center, as defined in subdivision (k) of Section 1250, the construction of which was completed prior to March 7, 1973. This paragraph shall remain operative only until January 1, 1993.

(9) Any building licensed as a correctional treatment center, as defined in subdivision (k) of Section 1250, operated by a city, city and county, or county.

SEC. 3. Section 15046 5 is added to the Health and Safety Code, to read:

15046.5. The statewide office shall adopt specific space and architectural standards, in cooperation with the Board of Corrections, for city, county, or city and county correctional treatment centers. Any city, county, or city and county correctional treatment center which has submitted preliminary construction

plans to the Board of Corrections on or before September 30, 1990, shall be exempt from these space and architectural standards if the final construction documents are submitted to the board on or before September 30, 1991. The statewide office shall have plan review authority only for the correctional treatment center part of the entire correctional facility, and may charge a fee for this review which shall not exceed the actual costs for this review.

SEC. 4. Section 1203.1e of the Penal Code is amended to read:

1203.1e. (a) In any case in which a defendant is ordered to serve a period of confinement in a county jail or other local detention facility, and the defendant is eligible to be released on parole by the county board of parole commissioners, the court shall, after a hearing, make a determination of the ability of the person to pay all or a portion of the reasonable cost of providing parole supervision. The reasonable cost of those services shall not exceed the amount determined to be the actual average cost of providing parole supervision.

(b) If the court determines that the person has the ability to pay all or part of the costs, the court may set the amount to be reimbursed and order the person to pay that sum to the county in the manner in which the court believes reasonable and compatible with the person's financial ability. In making a determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon the person and any amount the person has been ordered to pay in restitution.

If practicable, the court shall order payments to be made on a monthly basis as directed by the court. Execution may be issued on the order in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(c) For the purposes of this section, "ability to pay" means the overall capability of the person to reimburse the costs, or a portion of the costs, of providing parole supervision and shall include, but shall not be limited to, consideration of all of the following factors:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the board consider a period of more than six months from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the person shall be able to obtain employment within the six-month period from the date of the hearing.

(4) Any other factor or factors which may bear upon the person's financial capability to reimburse the county for the costs.

(d) At any time during the pendency of the order made under this section, a person against whom an order has been made may petition the court to modify or vacate its previous order on the grounds of a change of circumstances with regard to the person's ability to pay. The court shall advise the person of this right at the time of making the order.

(e) All sums paid by any person pursuant to this section shall be

deposited in the general fund of the county.

(f) The parole of any person shall not be denied or revoked in whole or in part based upon the inability or failure to pay under this section.

(g) The county board of parole commissioners shall not have access to offender financial data prior to the rendering of any parole decision.

SEC. 5. Title 4.85 (commencing with Section 4497) is added to Part 3 of the Penal Code, to read:

TITLE 4.85. COUNTY CORRECTIONAL FACILITIES CAPITAL EXPENDITURE AND YOUTH FACILITY BOND ACT OF 1988 ALLOCATIONS

CHAPTER 1. GENERAL

4497. (a) The Legislature finds and declares that approval by the electors of the County Correctional Facilities Capital Expenditure and Youth Facility Bond Act of 1988 has made new funds available for the construction and renovation of county jails and county juvenile facilities. The Legislature hereby directs the Board of Corrections to allocate and administer the moneys intended in the County Correctional Facilities Capital Expenditure and Youth Facility Bond Act of 1988 for county jails, and the Department of the Youth Authority to allocate and administer the moneys intended in the County Correctional Facilities Capital Expenditure and Youth Facility Bond Act of 1988 for juvenile facilities, in accordance with the provisions of this title.

(b) Money appropriated for allocation under this title may be used for the renovation, replacement, reconstruction, or construction of county jail facilities, county medical facilities designated to house persons charged with or convicted of a crime and who are mentally ill, and county juvenile facilities. Money appropriated by this title may also be used for construction of separate local detention facility space for detoxification of persons arrested because of intoxication.

(c) It is the Legislature's intention to make the money appropriated for allocation under this title available to counties with established and documented needs for capital projects for jail and juvenile facilities. However, that money shall not be used to build facilities that the counties cannot afford to operate fully and safely.

CHAPTER 2. COUNTY JAILS

4497.02. (a) For the purpose of this chapter:

(1) "Board" means the Board of Corrections.

(2) "Fund" means the 1988 County Correctional Facilities Capital Expenditure and Youth Facility Fund.

(b) The Board of Corrections shall not itself be deemed a

responsible agency, as defined by Section 21069 of the Public Resources Code, or otherwise be subject to the California Environmental Quality Act for any activities under this title, the County Jail Capital Expenditure Bond Acts of 1981 or 1984, or the County Facility Capital Expenditure Bond Act of 1986. This subdivision does not exempt any local agency from the requirements of the California Environmental Quality Act.

4497.04. Money appropriated to the board for allocation pursuant to this chapter shall be allocated as follows:

(a) Funding shall be provided for those projects entitled to be funded under subdivision (c) of Section 3 of Chapter 444, Statutes of 1984, as amended, and Section 5 of Chapter 1519, Statutes of 1986, to the extent that those projects have not received full funding.

(b) The following additional amounts shall be allocated to the counties for the construction, reconstruction, replacement, or renovation of county jail facilities. These funds shall not be used to supplant local funds directed to previously approved state projects. Nor shall these funds be used to reimburse counties whose match on previously approved projects exceeded the required 25 percent These funds may be used for allocations specified in subdivisions (c) and (d) of Chapter 444, Statutes of 1984, as amended, and Section 5, subdivision (b) of Chapter 1519, Statutes of 1986.

County	Allocation
Alameda	$ 6,441,198
Alpine	62,541
Amador	0
Butte	1,900,266
Calaveras	0
Colusa	0
Contra Costa	1,420,488
Del Norte	1,317,106
El Dorado	0
Fresno	4,326,606
Glenn	732,094
Humboldt	2,116,523
Imperial	0
Inyo	1,214,025
Kern	9,650,404
Kings	891,687
Lake	1,699,291
Lassen	727,717
Los Angeles	172,682,741
Madera	0
Marin	2,166,458
Mariposa	117,478
Mendocino	1,214,270
Merced	2,446,318
Modoc	181,761

Mono	120,421
Monterey	7,429,146
Napa	358,819
Nevada	1,179,930
Orange	21,723,387
Placer	2,022,123
Plumas	166,775
Riverside	10,476,076
Sacramento	6,299,898
San Benito	1,270,642
San Bernardino	10,874,718
San Diego	32,675,959
San Francisco	17,015,321
San Joaquin	12,377,292
San Luis Obispo	2,033,185
San Mateo	2,452,925
Santa Barbara	2,438,604
Santa Clara	11,780,710
Santa Cruz	2,889,829
Shasta	0
Sierra	119,234
Siskiyou	0
Solano	1,125,732
Sonoma	3,877,521
Stanislaus	3,649,178
Sutter	964,137
Tehama	532,947
Trinity	225,380
Tulare	2,513,889
Tuolumne	677,876
Ventura	14,733,637
Yolo	686,721
Yuba	1,844,691
TOTAL	$387,845,675

(c) If any county declares that it is unable to use the funds allocated to it under this section, or if any county is unable to satisfy the prerequisites for funding listed in Section 4494.10, the amount allocated to the county in this section shall revert to the state, to be reallocated by the board.

(d) If funds beyond those needed for the itemized amounts become available for reallocation, the board shall reallocate those funds under subdivision (e).

(e) Reverted funds under this chapter or subdivision (c) of Chapter 1519 of the Statutes of 1986 shall be reallocated to counties pursuant to the development and adoption of a new allocation plan as determined by an allocation advisory committee appointed by the board. The allocation advisory committee shall convene upon notification by the board that funds have been reverted. Reallocated

funds shall be distributed three times. The first distribution shall occur on December 31, 1990; the second distribution shall occur on December 31, 1992, and the final distribution shall occur on December 31, 1993. If any county seeking funds has not completed architectural drawings at the time reallocation funds become available, the county shall be removed from reallocation consideration until it has completed architectural drawings.

(f) Any county that receives funds pursuant to this chapter or pursuant to Chapter 444 of the Statutes of 1984, as amended, or Chapter 1519 of the Statutes of 1986, that, in the aggregate, total ten million dollars ($10,000,000) or less may pool or combine those funds for the purpose of financing a jail construction project, subject to approval of the project pursuant to this chapter. However, under no circumstances shall the pooling of successive bond allocations relieve or exempt the county from its obligation to meet the 25 percent local match requirement.

This subdivision shall not be interpreted as an authorization to utilize allocated funds to reimburse counties whose match on previously approved and completed projects exceeded the required 25 percent.

4497.06. (a) The board shall administer the funds allocated in this chapter to adult jail facilities, according to existing County Correctional Facilities Capital Expenditure Fund regulations, except as those regulations may be amended to comply with the provisions of this chapter.

(b) The board shall apply its regulations in the approval or disapproval of county jail projects, except that the board may approve a project if the board finds, after conducting a public hearing, that although the county cannot possibly meet the regulations, the county will nonetheless comply with Section 4485.6.

4497.08. No state moneys shall be encumbered in contracts with a county, nor released to a county, for construction or renovation of a local jail facility pursuant to this chapter until the conditions of this chapter have been fulfilled by the county.

4497.10. To be eligible for funding consideration, a county shall, to the satisfaction of the board, do all of the following:

(a) Certify that juveniles are not housed in the county's adult detention facilities, except where authorized by law; and document the existence of, or plans for, separate housing for juveniles.

(b) Document the existence of, or plans for, separate housing for persons detained or arrested because of intoxication, which will prevent mixing of this category of prisoner with other prisoners. If the county has no existing provisions for detoxification housing, it shall make provisions for that housing as part of its proposed project.

(c) Document the existence of, or plans for, separate housing for mentally disordered defendants or convicted prisoners which will prevent mixing of this category of prisoner with other prisoners until the time that the responsible health authority or his or her designee clears specific prisoners for nonseparate housing, based on clinical

judgment. If the county has no existing provisions for separate housing of mentally disordered prisoners, it shall make provisions for that housing as part of its proposed project.

(d) Submit a formal project proposal to the board on or before September 30, 1990. The project proposal shall describe the construction or renovation project to be undertaken and shall include an estimated budget for the project. The proposal shall also identify how county funding obligations, both for construction and operation of the facility, will be met. The project proposal shall be consistent with the needs and priorities identified in the needs assessment by the county.

Failure to submit a project proposal shall be deemed a declaration by the county that it does not intend to request its allocation under subdivisions (a) and (b) of Section 4497.04, and the amounts allocated in those subdivisions to the county shall be available for reallocation by the board. The board may waive this requirement for submission of a proposal within one year if it determines there are unavoidable delays in the county's preparation of a project proposal.

(e) Submit architectural drawings which shall be approved by the board for compliance with minimum jail standards and by the State Fire Marshal for compliance with fire safety requirements. If the board concludes that a county's proposed construction or renovation contains serious design deficiencies that, while they would not require a refusal to enter into the contract, would seriously impair the facility's functioning, it shall notify the sheriff and the board of supervisors of that county of the deficiencies and shall delay entering into a contract with the county for at least 30 days after mailing the letter. This letter shall be a public record.

(f) The county shall certify that it owns, or has long-term possession of, the construction site.

(g) The county shall have filed a final notice of determination on its environmental impact report with the board.

(h) The county has formally adopted a plan to finance the construction of the proposed facility.

(i) The county shall have submitted a preliminary staffing plan for the proposed facility, along with an analysis of other operating costs anticipated for the facility, to the board for review and comment. Prior to submission of the staffing plan and operating costs analysis of the board, the county board of supervisors shall have reviewed and approved the submittal in or following public hearings. The sheriff shall also have reviewed and commented on the preliminary staffing plan and the operating cost analysis. The board shall comment in writing to the sheriff and board of supervisors. This letter shall be a public record.

(j) The county shall submit either a major or minor needs assessment documenting the need for and purpose of the proposed project. The needs assessment shall meet all requirements listed in the applicable County Correctional Facility Capital Expenditure Fund regulations. The board may exempt a county from performing

a new needs assessment if any of the following conditions exist:

(1) The board determines that a prior needs assessment is in substantial compliance and it justifies the project being funded in Section 4497.04.

(2) A county receives funds from this bond act in an amount of three hundred thousand dollars ($300,000) or less.

If exempted from performing a needs assessment, counties shall provide an analysis of specific jail deficiencies, including levels of security, program, including, but not limited to, medical and mental health care, housing, and administration. This analysis shall also include specific plans for correcting the deficiencies.

(k) Demonstrate to the board unless the county's sole project is a remodel of an existing adult detention facility which will not result in the addition of any beds, that it is using, to the greatest extent feasible, alternatives to incarceration based on the following measures: an incarceration rate of no more than one standard deviation above the mean for all counties and, either a pretrial misdemeanor incarceration rate of no more than one standard deviation above the mean for all counties or a sentenced prisoner alternatives percentage or 5 percent or more as related to total sentenced prisoner admissions.

(1) The data to be used in establishing the incarceration rate will be the 1989 calendar year average daily population as reported by each county to the board and the Department of Finance Report on Population by County.

(2) The pretrial misdemeanor incarceration rate will be based on an average of the daily pretrial misdemeanor jail population, developed from a four-day sample period in 1989 specified by the board.

(3) The sentenced prisoner alternatives percentage will be based on enrollment in three programs: Section 4024.2 of the Penal Code (work-in-lieu of jail), county parole, and home detention if the placement is made after some jail time is served.

(4) Counties failing to demonstrate adequate use of alternatives to incarcerations by the above measure by March 30, 1990, shall be reevaluated annually by the board. If any county is unable to satisfy the requirements of this section by September 30, 1993, the amount allocated to the county shall revert to the state, to be reallocated by the board pursuant to subdivision (c) of Section 4497.04.

(*l*) Begin construction or renovation work within four years of the effective date of this title. If a county fails to meet this requirement, any allocations to the county under this chapter shall be deemed void and moneys allocated to the county shall revert to the board for reallocation. The board may waive this requirement if it determines that there are unavoidable delays in the initial construction activities.

(m) Counties shall provide for the construction of appropriate courtroom facilities and hearing room facilities within any jail construction plan submitted to the board. Those courtroom facilities and hearing room facilities shall be utilized for purposes of holding

appropriate arraignments and bail hearings and for the conduct of parole revocation hearings. The board may waive this requirement where county specific circumstances dictate.

4497.12. County match on projects funded under this chapter shall be a minimum of 25 percent of the total project costs. Costs eligible for state funding and as county match shall be those defined in applicable existing sections of the County Correctional Facilities Capital Expenditure Fund regulations, which regulations may be amended.

4497.14. (a) The board shall not approve the expenditures of funds allocated under this act for the construction of county detention facilities until a master site plan for county detention facilities has been prepared and adopted by the board of supervisors of the county proposing to construct the facility. The board of supervisors shall determine the location of any detention facilities pursuant to a master plan, which determination shall not be subject to any initiative or ordinance adopted by initiative. In developing the plan, the board of supervisors shall consider alternatives to additional detention facilities and the specific concerns of incorporated cities and other community representatives, and shall give special consideration to existing federal, state, and local detention facilities in order to avoid over-concentration of inmates in one geographic area of the county. If the board of supervisors decides to locate new or expanded detention facilities near existing detention facilities, it shall publicly state its reasons for that decision.

The board shall only approve expenditure of funds allocated under this chapter for the construction of detention facilities in accordance with the plan adopted pursuant to this section. The board may exempt a county from this requirement if the master site plan remains unchanged from that approved under the provisions of the County Correctional Facilities Capital Expenditure Bond Act of 1986.

(b) The board shall establish construction costs controls and shall set forth in regulation procedures for setting maximum state funding levels for appropriate construction unit costs, including cost per cell for specified categories of facilities. These cost controls shall be based on average costs in recently constructed facilities in California that are comparable in size, use, location, and other relevant factors.

Allocations listed in Section 4497.04 notwithstanding, the state contribution shall be up to 75 percent of total project costs or up to 75 percent of the applicable construction cost norms, whichever is lower. Nothing in this section is intended, however, to prescribe maximum limits on county funding levels for the projects.

Prior to releasing any funds to a county, the board shall review construction cost levels in the funded projects for compliance with cost control regulations.

(c) Prior to entering into a contract with a county, the board shall review or approve or both review and approve the county submissions required by this chapter regarding the facility or

facilities proposed for funding.

(d) The board shall collect annually from all counties information on county incarceration rates, average daily jail populations as a proportion of the total county population or total arrests or both; pretrial misdemeanant ratios, the percentage which unsentenced prisoners charged only with misdemeanors constitute the total average daily unsentenced jail population; and sentenced alternatives ratios, for example, average daily populations in work-in-lieu of jail programs and county parole as a percentage of the total average daily sentenced misdemeanant prisoner population. All counties that have received or will receive state funds for jail construction shall supply the board the information necessary to comply with this section.

4497.16. If after a hearing, the board makes a finding that a county has failed to comply with a condition or plan approved by the board relating to the requirements of Section 4485.6, the board may require the county to pay an amount equal to the pro rata portion of the principal and interest, paid by the state on bonds the proceeds of which were allocated pursuant to this chapter to the county for the period of noncompliance. The repayment provisions shall not be applicable if the noncompliance with the condition or plan is the result of circumstances beyond the control of the county, or the board finds the county cannot reasonably comply under the circumstances.

4497.18. (a) As part of its annual report to the Legislature, the board shall provide to the Legislature a report on the status of funds expended, interest being earned, actions implementing the prerequisites for funding listed in Section 4497.04, and any reallocations of funds pursuant to Section 4497.04. The report shall contain a complete listing of funds allocated to each county. The board shall also submit appropriate recommendations, if any, on needed changes in the program and on other matters pertinent to jail funding on which the board wishes to inform the Legislature. The report shall be submitted to the Legislature on or before July 1 of each year.

(b) In order to provide information pertinent to the performance of this funding program and to any additional funding needs, counties receiving funds under this chapter shall, as a condition of the funding contract, report to the board, at intervals and in a manner to be determined by the board. The sheriff or other official in charge of operating the adult detention system in a county receiving funds under this act shall maintain an inmate accounting system. Data to be maintained on an annual basis includes the following:

(1) Average daily population of sentenced and unsentenced prisoners by categories of male, female, and juvenile.

(2) Jail admissions of sentenced and unsentenced prisoners by categories of male, female, booking charge, date and time of booking, date and time of release, and operating expenses.

(3) Detention system capital and operating expenses.

CHAPTER 3. JUVENILE FACILITIES

4497.20. (a) The Department of the Youth Authority is hereby directed to administer the moneys intended for juvenile facilities in the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988, in accordance with the provisions of this chapter.

(b) It is the intention of the Legislature to make the money appropriated for allocation under this chapter available to counties with established and documented needs for capital projects for juvenile facilities.

(c) Counties that apply for funds to alleviate overcrowding shall submit a preliminary staffing plan for the proposed facility, along with an analysis of other operating costs anticipated for the facility, to the Department of the Youth Authority for review and comment. Prior to submission of the staffing plan and operating cost analysis to the department, the board of supervisors shall have reviewed and approved the submittal in or following public hearings. The chief probation officer shall also have reviewed and commented on the preliminary staffing plan and operating cost analysis. The department shall comment in writing to the chief probation officer and board of supervisors. This response shall be a public record.

(d) The Department of the Youth Authority shall conduct an assessment of the needs of counties for juvenile facilities in California which shall be submitted to the Legislature by June 30, 1990.

4497.22. Funds appropriated to the Department of the Youth Authority for allocation under this chapter shall be allocated as provided by this chapter.

4497.24. Two million dollars ($2,000,000) shall be set aside initially for the counties that did not have juvenile facilities on January 1, 1987. These funds shall be used to construct county juvenile facilities and are hereby allocated as follows:

Amador	$ 33,000
Calaveras	80,000
Colusa	75,000
Inyo	846,000
Lassen	350,000
Mariposa	50,000
Modoc	126,000
Mono	18,000
Plumas	45,000
San Benito	243,000
Sierra	10,000
Trinity	30,000
Tuolumne	94,000

4497.26. Ten million dollars ($10,000,000) shall be set aside initially for counties that do not have efficient and adequate facilities for youth with special problems. Two or more counties may apply jointly to construct those facilities regionally. No more than three million three hundred thousand dollars ($3,300,000) shall be awarded for the construction of each regional facility.

4497.28. Forty-eight million seven hundred fifty thousand dollars ($48,750,000) shall be set aside initially for counties to alleviate overcrowding and eliminate health, fire, and life safety deficiencies in juvenile facilities or provide efficient and adequate facility for youth with special problems. These funds are hereby allocated on a per capita share basis to all counties except those listed in Section 4497.24, as follows:

Alameda	$ 2,161,656
Butte	303,787
Contra Costa	1,329,808
Del Norte	34,798
El Dorado	210,354
Fresno	1,064,299
Humboldt	201,133
Imperial	196,087
Kern	901,792
Kings	163,725
Lake	89,431
Los Angeles	14,970,647
Madera	143,542
Marin	400,004
Mendocino	132,407
Merced	297,871
Monterey	605,660
Napa	184,952
Nevada	134,321
Orange	3,934,095
Placer	272,121
Riverside	1,700,581
Sacramento	1,696,928
San Bernardino	2,235,602
San Diego	4,123,745
San Francisco	1,275,871
San Joaquin	794,440
San Luis Obispo	360,682
San Mateo	1,093,529
Santa Barbara	596,961
Santa Clara	2,488,758
Santa Cruz	393,914
Shasta	242,890
Siskiyou	75,338
Solano	544,764

Sonoma	636,457
Stanislaus	591,915
Sutter	107,352
Tehama	81,253
Tulare	517,621
Ventura	1,125,195
Yolo	234,887
Yuba	98,827

4497.30. Three million twenty-five thousand dollars ($3,025,000) shall be set aside initially for bond interest costs and two hundred fifty thousand dollars ($250,000) shall be set aside to conduct a statewide assessment of the counties' needs for juvenile facilities.

4497.32. (a) Funds which were set aside initially as provided by Sections 4497.24 to 4497.30, inclusive, that are not used and funds that were allocated under the provisions of the County Correctional Facility Capital Expenditure Bond Act of 1986 that are not used shall be allocated by the Department of the Youth Authority to those counties that received an allocation under Section 4497.28 which was not sufficient to fund the remaining portion of the total cost of the approved projects. The amount of each of those county's allocation shall be that county's per capita share of the total funds available for all counties with partially funded projects, or the amount needed to complete funding of that county's approved projects, whichever is less. At no time shall the allocation exceed 75 percent of the total eligible costs.

(b) The allocation procedure described in subdivision (a) shall be repeated until all of the available funds are awarded.

(c) Funds awarded by the Department of the Youth Authority under this section shall be used for the construction, reconstruction, remodeling, or replacement of county juvenile facilities, and for the performance of deferred maintenance on juvenile facilities, but may only be used for the purpose of reducing current overcrowding and eliminating health, fire, and life safety hazards

4497.34. (a) Counties with overcrowded juvenile facilities shall not be eligible to receive funds to construct, reconstruct, remodel, or replace juvenile facilities unless they have adopted a plan to correct overcrowded conditions within their facilities which includes the use of alternatives to detention. The corrective action plan shall provide for the use of five or more methods or procedures to minimize the number of minors detained and shall be approved by the board of supervisors during or subsequent to a public hearing.

(b) To be eligible for funding under this chapter, the county shall enter into a contract with the Department of the Youth Authority and begin construction or renovation work within four years of the operative date of the regulations that implement this chapter. If a county fails to meet this requirement, any allocations or awards to that county under this chapter shall be deemed void and any moneys allocated or awarded to that county shall revert to the Department

of the Youth Authority for reallocation to another county as provided by Section 4497.32. The department may waive this requirement if it determines that there are unavoidable delays in starting construction.

(c) To be eligible for funding for juvenile facilities under the County Correctional Facility Capital Expenditure Bond Act of 1986, the county shall enter into a contract with the Department of the Youth Authority and begin construction or renovation work by July 31, 1991. If a county fails to meet this requirement, all allocations or awards that have been made to that county under that act shall be deemed void and any moneys allocated or awarded to that county shall revert to the Department of the Youth Authority and are reappropriated for reallocation as provided by Section 4497.32. The department may waive this requirement if it determines that there are unavoidable delays in starting construction.

4497.36. An application for funds shall be in the manner and form prescribed by the Department of the Youth Authority.

4497.38. Awards shall be made only if county matching funds of 25 percent are provided.

4497.40. The Department of the Youth Authority shall report to the Legislature by July 1, 1991, on the status of funds expended and provide a complete list of funds allocated to each county.

CHAPTER 4. PURCHASE OF CORRECTIONAL INDUSTRY PRODUCTS FOR CORRECTIONAL, JUVENILE, AND YOUTH FACILITIES

4497.50. In order to be eligible to receive funds derived from the issuance of General Obligation Bonds under the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988, a county or city and county shall do all the following:

(a) In the design and planning of facilities whose construction, reconstruction, or remodeling is financed under the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988, products for construction, renovation, equipment, and furnishings produced and sold by the Prison Industry Authority or local jail industry programs shall be utilized in the plans and specifications unless the county or city and county demonstrates either of the following to the satisfaction of the Board of Corrections or the Department of the Youth Authority:

(1) The products cannot be produced and delivered without causing delay to the construction of the property.

(2) The products are not suitable for the facility or competitively priced and cannot otherwise be reasonably adapted.

(b) Counties and cities and counties shall consult with the staff of the Prison Industry Authority or local jail industry program to develop new products and adapt existing products to their needs.

(c) The Board of Corrections or the Department of the Youth Authority shall not enter into any contract with any county or city and county until that county's or city and county's plan for purchase

from and consultation with the Prison Industry Authority or local jail industry program is reviewed and approved by the Board of Corrections or the Department of the Youth Authority.

4497.52. Notwithstanding any other provision of law, a county or city and county may contract for the purchase of products as specified in Section 4497.50 with the Prison Industry Authority or local jail industry program without the formality of obtaining bids or otherwise complying with provisions of the Public Contract Code.

4497.54. The Prison Industry Authority shall designate an individual as County Jail and Juvenile Facility Liaison who shall work with counties to maximize the utilization of Prison Industry Authority products for construction, renovation, equipment, and furnishing, to ensure that manufactured products meet the contract specifications and delivery dates, and to assure consultation with counties for development of new products and adaption of existing products to meet their needs.

4497.56. It is the intent of the Legislature to maximize the utilization of Prison Industry Authority products for jail construction, renovation, equipment, and furnishings to ensure that prisoners work productively and contribute to reducing the cost to the taxpayers of their incarceration.

SEC. 6. Section 6025 of the Penal Code is amended to read:

6025. (a) The Board of Corrections shall be composed of 11 members, one of whom shall be the Secretary of the Youth and Adult Correctional Agency who shall be designated as the chairperson, one of whom shall be the Director of Corrections, one of whom shall be the Director of the Youth Authority, and eight of whom shall be appointed by the Governor after consultation with, and with the advice of, the Secretary of the Youth and Adult Correctional Agency, and with the advice and consent of the Senate. The gubernatorial appointments shall include:

(1) A county sheriff in charge of a local detention facility which has a Board of Corrections rated capacity of 200 or less inmates.

(2) A county sheriff in charge of a local detention facility which has a Board of Corrections rated capacity of over 200 inmates.

(3) A county supervisor or county administrative officer.

(4) A chief probation officer.

(5) A manager or administrator of a county local detention facility.

(6) An administrator of a local community-based correctional program.

(7) Two public members.

(b) Of the members first appointed by the Governor, two shall be appointed for a term of two years, three for a term of three years, and three for a term of four years. The length of the original term to be served by each such member first appointed shall be determined by lot Their successors shall serve for a term of three years and until appointment and qualification of their successors, each term to commence on the expiration date of the term of the

predecessor.

(c) The board shall select a vice chairperson from among its members. Six members of the board shall constitute a quorum.

(d) When the Board of Corrections is hearing charges against any member, the individual concerned shall not sit as a member of the board for the period of hearing of charges and the determination of recommendations to the Governor.

(e) If any appointed member is not in attendance for three consecutive meetings the board shall recommend to the Governor that the member be removed and the Governor shall make a new appointment, with the advice and consent of the Senate, for the remainder of the term.

SEC. 7. Section 6029 of the Penal Code is amended to read:

6029. (a) 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 those 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.

(b) As used in this section, "place of detention" includes, but is not limited to, a correctional treatment center, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, which is operated by a city, city and county, or county.

SEC. 8. Section 20134 of the Public Contract Code is amended to read:

20134. (a) In cases of great emergency, including, but not limited to, states of emergency described in Section 8558 of the Government Code, when repair or replacements are necessary to permit the continued conduct of county operations or services, or to avoid danger to life or property, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or giving notice for bids to let contract. The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly

or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753 3 of the Welfare and Institutions Code, the board of supervisors may contract for the construction or expansion of the facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for

proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Chapter 5 (commencing with Section 5100) of Part 1 of Division 2 of the Public Contract Code for work performed pursuant to subdivision (a), (b), or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

SEC. 9. Section 20134 of the Public Contract Code is amended to read:

20134. (a) In cases of great emergency, including, but not

limited to, states of emergency described in Section 8558 of the Government Code, when repair or replacements are necessary to permit the continued conduct of county operations or services, or to avoid danger to life or property, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or giving notice for bids to let contract. The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, or in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may contract for the construction or expansion of jail facilities and court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753.3 of the Welfare and Institutions

Code, the board of supervisors may contract for the construction or expansion of the facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Chapter 5 (commencing with Section 5100) of Part 1 of Division 2 of the Public Contract Code for work performed pursuant to subdivision (a), (b), or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specification, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section

6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

SEC. 10. Section 207.1 of the Welfare and Institutions Code is amended to read:

207.1. (a) No court, judge, referee, peace officer, or employee of a detention facility shall knowingly detain any minor in a jail or lockup, except as provided in subdivision (b) or (d).

(b) Any minor who is alleged to have committed an offense described in subdivision (b) of Section 707, whose case is transferred to a court of criminal jurisdiction pursuant to Section 707.1 after a finding is made that he or she is not a fit and proper subject to be dealt with under the juvenile court law, may be detained in a jail or other secure facility for the confinement of adults, if all of the following conditions are met:

(1) The juvenile court judge makes a finding at the conclusion of the fitness hearing that the minor's further detention in the juvenile hall would endanger the safety of the public or would be detrimental to the other minors in the juvenile hall.

(2) Contact between the minor and adults in the facility is restricted in accordance with Section 208.

(3) The minor is adequately supervised.

(4) The adult facility has been approved by the Youth Authority as an appropriate place for the detention of minors so transferred.

(c) A minor who is found not to be a fit and proper subject to be dealt with under the juvenile court law shall, upon the conclusion of the fitness hearing, be entitled to be released on bail or on his or her own recognizance upon the same circumstances, terms, and conditions as an adult who is alleged to have committed the same offense.

(d) A minor 14 years of age or older who is taken into temporary custody by a peace officer on the basis of being a person described by Section 602, and who, in the reasonable belief of the peace officer, presents a serious security risk of harm to self or others, may be securely detained in a law enforcement facility that contains a lockup for adults, if all of the following conditions are met:

(1) The minor is held in temporary custody for the purpose of investigating the case, facilitating release of the minor to a parent or guardian, or arranging transfer of the minor to an appropriate juvenile facility.

(2) The minor is detained in the law enforcement facility for a

period that does not exceed six hours.

(3) The minor is informed at the time he or she is securely detained of the purpose of the secure detention, of the length of time the secure detention is expected to last, and of the maximum six-hour period the secure detention is authorized to last.

(4) Contact between the minor and adults confined in the facility is restricted in accordance with Section 208.

(5) The minor is adequately supervised.

(6) A log or other written record is maintained by the law enforcement agency showing the offense which is the basis for the secure detention of the minor in the facility, the reasons and circumstances forming the basis for the decision to place the minor in secure detention, and the length of time the minor was securely detained.

Any other minor who is taken into temporary custody by a peace officer on the basis that the minor is a person described by Section 602, may be taken to a law enforcement facility that contains a lockup for adults and may be held in temporary custody in the facility for the purposes of investigating the case, facilitating the release of the minor to a parent or guardian, or arranging for the transfer of the minor to an appropriate juvenile facility. However, while in the law enforcement facility, the minor may not be securely detained and shall be supervised in a manner so as to ensure that there will be no contact with adults in custody in the facility. If the minor is held in temporary, nonsecure custody within such a facility, the peace officer shall exercise one of the dispositional options authorized by Sections 626 and 626.5 without unnecessary delay and, in every case, within six hours.

As used in this subdivision, "law enforcement facility" includes a police station or a sheriff's station, but does not include a jail, as defined in subdivision (i).

(e) The Youth Authority shall assist law enforcement agencies, probation departments, and courts with the implementation of this section by doing all of the following:

(1) The Youth Authority shall advise each law enforcement agency, probation department, and court affected by this section as to its existence and effect.

(2) The Youth Authority shall inquire of the official in charge of each jail or lockup that reported the confinement of a minor in calendar year 1984 or 1985 as to whether the jail or lockup may be used for the future confinement of any minor pursuant to subdivision (b), and if the Youth Authority is informed that the jail or lockup may be so used, it shall inspect the jail or lockup and determine whether it is an appropriate place for the secure detention of minors in conformity with the requirements of law.

(3) The Youth Authority shall make available and shall, upon request, provide technical assistance to each governmental agency that reported the confinement of a minor in a jail or lockup in calendar year 1984 or 1985. The purpose of this technical assistance

is to develop alternatives to the use of jails or lockups for the confinement of minors. These alternatives may include secure or nonsecure facilities located apart from an existing jail or lockup; improved transportation or access to juvenile halls or other juvenile facilities; and other programmatic alternatives recommended by the Youth Authority. The technical assistance shall take such form as the Youth Authority deems appropriate for effective compliance with this section.

(f) The Youth Authority may exempt a county that does not have a juvenile hall, or may exempt an offshore law enforcement facility, from compliance with this section for a reasonable period of time, until December 31, 1990, for the purpose of allowing the county or the facility to develop alternatives to the use of jails and lockups for the confinement of minors, if all of the following conditions are met:

(1) The county or the facility submits a written request to the Youth Authority for an extension of time to comply with this section.

(2) The Youth Authority agrees to make available, and the county or the facility agrees to accept, technical assistance to develop alternatives to the use of jails and lockups for the confinement of minors during the period of the extension.

(3) The county or the facility requesting the extension submits to the Youth Authority a written plan for full compliance with this section by September 1, 1987

As used in this subdivision and in subdivision (g), "offshore law enforcement facility" and "facility" means a sheriff's station containing a lockup for adults that is located on an island located at least 22 miles from the California coastline.

(g) (1) Under the limited conditions of inclement weather, acts of God, or natural disasters that result in the temporary unavailability of transportation, an extension of the six-hour maximum period of detention set forth in paragraph (2) of subdivision (d) may be granted to a county by the Youth Authority. The extensions may only be granted by the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall not exceed the duration of the special conditions, plus a period reasonably necessary to accomplish transportation of the minor to a suitable juvenile facility, not to exceed six hours after the restoration of available transportation.

A county that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The county shall also provide a written report to the Youth Authority that specifies when the inclement weather, act of God, or natural disaster ceased to exist, when transportation availability was restored, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained for a period in excess of 72 hours, the Youth Authority shall verify the information contained in the report.

(2) Under the limited condition of temporary unavailability of transportation, an extension of the six-hour maximum period of

detention set forth in paragraph (2) of subdivision (d) may be granted by the Youth Authority to an offshore law enforcement facility. The extension may only be granted by the Youth Authority on an individual, case-by-case basis. If the extension is granted, the detention of minors under those conditions shall only extend until the next available mode of transportation can be arranged.

An offshore law enforcement facility that receives an extension under this paragraph shall comply with the requirements set forth in subdivision (d). The facility shall also provide a written report to the Youth Authority that specifies when the next mode of transportation became available, and when the minor was delivered to a suitable juvenile facility. In the event that the minor was detained for a period in excess of 24 hours, the Youth Authority shall verify the information contained in the report.

As used in this paragraph, "offshore law enforcement facility" means a sheriff's station containing a lockup for adults that is located on an island at least 22 miles from the California coastline.

(3) At least annually, the Youth Authority shall review and report on extensions sought and granted under this subdivision. If, upon that review, the Youth Authority determines that a county has sought extension resulting in the excessive confinement of minors in adult facilities, or that a county is engaged in a pattern and practice of seeding extensions, it shall require the county to submit a detailed explanation of the reasons for the extensions sought and an assessment of the need for a conveniently located and suitable juvenile facility. Upon receiving this information, the Youth Authority shall make available, and the county shall accept, technical assistance for the purpose of developing suitable alternatives to the confinement of minors in adult lockup. Based upon the information provided by the county, the Youth Authority may also place limits on, or refuse to grant, future extensions requested by the county under this subdivision

(h) Any county that did not have a juvenile hall on January 1, 1987, may establish a special purpose juvenile hall, as defined by the Youth Authority, for the detention of minors for a period not to exceed 96 hours. Any county that had a juvenile hall on January 1, 1987, may, in addition to the juvenile hall, also establish a special purpose juvenile hall. The Youth Authority shall prescribe minimum standards for any such facility.

(i) (1) As used in this chapter, "jail" means any building which contains a locked facility administered by a law enforcement or governmental agency, the purpose of which is to detain adults who have been charged with violations of criminal law and are pending trial, or to hold convicted adult criminal offenders sentenced for less than one year.

(2) As used in this chapter, "lockup" means any locked room or secure enclosure under the control of a sheriff or other peace officer which is primarily for the temporary confinement of adults upon arrest.

(j) Nothing in this section shall be deemed to prevent a peace officer or employee of an adult detention facility or jail from escorting a minor into the detention facility or jail for the purpose of administering an evaluation, test, or chemical test pursuant to Section 23157 of the Vehicle Code, if all of the following conditions are met:

(1) The minor is taken into custody by a peace officer on the basis of being a person described by Section 602 and there is no equipment for the administration of the evaluation, test, or chemical test located at a juvenile facility within a reasonable distance of the point where the minor was taken into custody.

(2) The minor is not locked in a cell or room within the adult detention facility or jail, is under the continuous, personal supervision of a peace officer or employee of the detention facility or jail, and is not permitted to come in contact or remain in contact with in-custody adults.

(3) The evaluation, test, or chemical test administered pursuant to Section 23157 of the Vehicle Code is performed as expeditiously as possible, so that the minor is not unnecessarily delayed within the adult detention facility or jail. Upon completion of the evaluation, test, or chemical test, the minor shall be removed from the detention facility or jail as soon as reasonably possible. No minor shall be held in custody in an adult detention facility or jail under the authority of this paragraph for a period in excess of two hours.

SEC. 11. Section 209 of the Welfare and Institutions Code is amended to read:

209. (a) The judge of the juvenile court of a county, or, if there is more than one such judge, any of the judges of the juvenile court shall, at least annually, inspect any jail, juvenile hall, or lockup which, in the preceding calendar year, was used for confinement, for more than 24 hours pursuant to subdivision (b) or (g) of Section 207.1, of any minor. The judge shall note in the minutes of the court whether the jail, juvenile hall, or lockup is a suitable place for confinement of minors.

The Department of the Youth Authority shall likewise conduct an annual inspection of each jail, juvenile hall, lockup, or special purpose juvenile hall situated in this state which, during the preceding calendar year, was used for confinement, for more than 24 hours pursuant to subdivision (b) or (g) of Section 207.1, of any minor.

If either a judge of the juvenile court or the department, after inspection of a jail, juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for the confinement of minors, the juvenile court or the department shall give notice of its finding to all persons having authority to confine minors pursuant to this chapter and commencing 60 days thereafter the jail, juvenile hall, or lockup shall not be used for confinement of minors until such time as the judge or department, as the case may be, finds, after reinspection of the jail, juvenile hall, or lockup that the conditions

which rendered the facility unsuitable have been remedied, and the facility is a suitable place for confinement of minors.

The custodian of each jail, juvenile hall, and lockup shall make such reports as may be required by the department or the juvenile court to effectuate the purposes of this section.

(b) The Department of the Youth Authority may inspect any law enforcement facility which contains a lockup for adults and which it has reason to believe may not be in compliance with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2. A judge of the juvenile court shall conduct an annual inspection, either in person or through a delegated member of the appropriate county or regional juvenile justice commission, of any law enforcement facility which contains a lockup for adults which, in the preceding year, was used for the secure detention of any minor.

If either the judge or the department finds after inspection that the facility is not being operated and maintained in conformity with the requirements of subdivision (d) of Section 207.1 or with the certification requirements or standards adopted under Section 210.2, the juvenile court or the department shall give notice of its finding to all persons having authority to securely detain minors in the facility, and, commencing 60 days thereafter, the facility shall not be used for the secure detention of a minor until such time as the judge or the department, as the case may be, finds, after reinspection, that the conditions which rendered the facility unsuitable have been remedied, and the facility is a suitable place for the confinement of minors in conformity with all requirements of law.

The custodian of each law enforcement facility which contains a lockup for adults shall make any report as may be required by the department or by the juvenile court to effectuate the purposes of this subdivision.

(c) The department shall collect annual data on the number, place, and duration of confinements of minors in jails and lockups, as defined in subdivision (h) of Section 207.1, and shall annually publish this information in the form as it deems appropriate for the purpose of providing public information on continuing compliance with the requirements of Section 207.1.

SEC. 12. Chapter 9 (commencing with Section 5590) is added to Part 1 of Division 5 of the Welfare and Institutions Code, to read:

CHAPTER 9. REGIONAL FACILITIES FOR SERIOUSLY EMOTIONALLY DISTURBED WARDS

5590. The Legislature finds and declares the following:

(a) The Legislature has declared its intent to provide, at the local level, a range of appropriate mental health services for seriously emotionally disturbed minors. These programs include both outpatient and nonsecure residential care and treatment.

(b) The Legislature recognizes that, while some minors will

benefit from this care and treatment, there exists a population within that group who have been adjudged wards of the juvenile court pursuant to Section 602 who are seriously emotionally disturbed, and by lack of behavior control and offense history, are not benefiting from existing programs, including the 24-hour facilities currently being operated under juvenile court law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2).

(c) The Legislature finds that there are no treatment facilities specifically designed and operated to provide both intensive mental health treatment and behavior control to this population of wards in a secure setting. These wards are frequent failures in open residential care and when confined to traditional juvenile justice system facilities, disrupt programming, endanger themselves and others, and require intensive supervision including occasional isolation and provision of a one-to-one supervision ratio. The behavior and needs of this population affect the ability of the existing facilities to meet the program needs of the remainder of the population which is more appropriately detained or committed there.

(d) Psychiatric hospitals frequently refuse to accept these wards because of their offense history or their extremely disruptive behavior, because they do not always meet medical necessity for acute admission, or because the lengths of stay in inpatient programs are too limited in duration. Because of these problems, seriously emotionally disturbed minors adjuged to be wards pursuant to Section 602 do not receive the level of mental health care necessary to interrupt the cycle of emotional disturbance leading to assaultive or self-destructive behavior.

(e) The Legislature therefore declares its intent to establish regional facilities which will provide an additional dispositional resource to the juvenile justice system, and which will demonstrate the feasibility and effectiveness of providing the services described in this chapter to seriously emotionally disturbed minors who have been adjudged wards of the juvenile court pursuant to Section 602 and whose physical and mental treatment needs require a secure facility and program. It is also the intent of the Legislature to secure for the minors committed to such a facility, the protection, custody, care, treatment, and guidance that is consistent with the purpose of the juvenile court law (Chapter 2 (commencing with Section 200) of Part 1 of Division 2).

5591. There may be established, on a regional basis, secure facilities which are physically and programmatically designed for the commitment and ongoing treatment of seriously emotionally disturbed minors who have been adjudged wards of the juvenile court pursuant to Section 602. No minor shall be committed to the facility for more than 18 months from the date of admission

5592. A board of directors for a facility shall be established to provide oversight and direction to the design, implementation, and operation of the facility in order to ensure adherence to the

statement of legislative intent in Section 5590 and to the overall goals and objectives of the facility.

5593. (a) The board of directors shall be composed of the chief probation officer and the local mental health directors of each of the participating counties.

(b) The regional facilities shall operate under the administration of the onsite director who shall be directly responsible to the board of directors for adherence to all policies and procedures established by the board and to the intent of the Legislature stated in Section 5590.

5594. Prior to the opening of any regional facility, the board of directors shall develop written admission criteria, approved by the Department of the Youth Authority, for those minors who are most at risk of entering the adult criminal justice system as emotionally disordered offenders at high risk of committing predatory and violent crimes, including, but not limited to, the following requirements:

(a) The minor is at the time of commitment between the ages of 12 and 18 years, he or she has been adjudged to be a ward of the juvenile court pursuant to Section 602, and his or her custody has been placed under the supervision of a probation officer pursuant to Section 727.

(b) The ward is seriously emotionally disturbed as is evidenced by a diagnosis from the current edition of the Diagnostic and Statistical Manual of Mental Disorders and evidences behavior inappropriate to the ward's age according to expected developmental norms. Additionally, all of the following must be present:

(1) The behavior presents a danger to the community or self and requires intensive supervision and treatment, but the ward is not amenable to other private or public residential treatment programs because his or her behavior requires a secure setting.

(2) The symptomology is both severe and frequent.

(3) The inappropriate behavior is persistent.

5595. No ward shall be admitted to any regional facility described in this chapter who meets any of the following:

(a) The ward has a primary substance abuse problem.

(b) The ward has a primary developmental disability.

(c) The ward requires an acute psychiatric hospital setting.

(d) The ward can benefit from or requires a level of treatment or confinement not provided at the facility.

(e) The ward suffers from a medical condition which requires ongoing nursing and medical care, beyond the level that the program can provide.

(f) The ward is under conservatorship established pursuant to Chapter 3 (commencing with Section 5350) of this part

5596. Prior to the opening of a facility, the board of directors shall establish written program standards and policies and procedures, approved by the Department of the Youth Authority that address and include, but are not limited to, the following:

(a) A staffing number and pattern that meets the special behavior, supervision, treatment, health, and educational needs of the population described in this chapter. Staff shall be qualified to provide intensive treatment and services and shall include, at a minimum:

(1) A project or clinical director, psychiatrist or psychologist, social worker, registered nurse, and recreation or occupational therapist.

(2) A pediatrician and dentist on an as-needed basis.

(3) Educational staff in sufficient number and with the qualifications needed to meet the population served.

(4) Child care staff in sufficient numbers and with the qualifications to meet the special needs of the population.

(b) Programming to meet the needs of all wards admitted, including, but not limited to, all of the following:

(1) Physical examinations on admission and ongoing health care.

(2) Appropriate and closely monitored use of all behavioral management techniques.

(3) The establishment of written, individual treatment and educational plans and goals for each ward within 10 days of admission and which are updated at least quarterly.

(4) Written discharge planning which addresses each ward's continued treatment, educational, and supervision needs.

(5) Regular, written progress records regarding the care and treatment of each ward.

(6) Regular and structured treatment of all wards, including, but not limited to, individual, group and family therapy, psychological testing, medication, and occupational, or recreational therapy.

(7) Access to neurological testing and laboratory work as needed.

(8) The opportunity for regular family contact and involvement.

(9) A periodic review of the continued need for treatment within the facility.

(10) Educational programming, including special education as needed.

5597. Wards shall be referred for admission to the director of a regional facility following screening and approval through a joint mental health and probation screening committee in the county which refers the minor. This screening process shall be defined in the standards, policies, and procedures governing the operation of the facility. The probation officer shall, in consultation and cooperation with the county mental health staff, process the ward's admission to the facility and implement the discharge plan.

5598. The regional board of directors shall contract with the county in which the regional facility is located for the provision of a public education program which will meet the educational requirements and needs of the wards admitted to the facility.

5598.5. The board of directors of a regional facility shall submit to the Director of the Youth Authority, a report which includes, at a minimum, a description of the regional facility, the population to be

served, criteria for admission and release, program goals and services, staffing, a postrelease component, appropriate educational programming, an annual evaluation component, and a proposed budget.

5599. The Director of the Youth Authority, in conjunction with the Director of Mental Health, shall adopt rules and regulations to establish, monitor, and enforce minimum standards for regional facilities.

SEC. 13. Section 5 of Chapter 1519 of the Statutes of 1986 is amended to read:

Sec. 5. Money appropriated to the Board of Corrections by this act shall be allocated as follows:

(a) Funding shall be provided for those projects entitled to be funded under subdivision (c) of Section 3 of Chapter 444 of the Statutes of 1984, as amended, to the extent that those projects have not received full funding.

(b) The following additional amounts shall be allocated to the counties for the construction, reconstruction, replacement, or renovation of county jail facilities or medical facilities for mentally ill prisoners. These funds shall not be used to supplant local funds directed to previously approved state funded projects. These funds may be used for allocations specified in subdivisions (c) and (d) of Chapter 444, Statutes of 1984, as amended, or for new projects.

Alameda	$ 8,796,941
Alpine	92,832
Amador	0
Butte	5,911,957
Calaveras	0
Colusa	0
Contra Costa	2,338,176
Del Norte	154,720
El Dorado	6 305,500
Fresno	11 998,924
Glenn	1 267,284
Humboldt	5 820,195
Imperial	0
Inyo	3,500
Kern	7,408,064
Kings	1,264,284
Lake	1,731,391
Lassen	926,847
Los Angeles	161,417,153
Madera	3,567,403
Marin	7,028,712
Mariposa	30,966
Mendocino	2,588,983
Merced	4,180,214
Modoc	278,496

Mono	209,241
Monterey	8,248,790
Napa	1,726,971
Nevada	2,754,017
Orange	18,274,305
Placer	1,298,897
Plumas	0
Riverside	16,895,432
Sacramento	3,775,170
San Benito	2,290,152
San Bernardino	15,000,000
San Diego	32,996,795
San Francisco	22,472,766
San Joaquin	26,383,482
San Luis Obispo	3,107,231
San Mateo	6,998,573
Santa Barbara	2,756,964
Santa Clara	29,209,970
Santa Cruz	1,307,164
Shasta	0
Sierra	278,842
Siskiyou	1,391,007
Solano	1,653,589
Sonoma	14,150,000
Stanislaus	5,981,036
Sutter	618,880
Tehama	556,992
Trinity	526,048
Tulare	20,700
Tuolumne	526,063
Ventura	10,681,110
Yolo	1,821,176
Yuba	4,588,555
	$471,615,899

(c) If any county declares that it is unable to use the funds allocated to it, under this section or under Chapter 444 of the Statutes of 1984, as amended, or if any county is unable to satisfy the prerequisites for funding listed in Section 6, the amount allocated to the county in this section shall revert to the state, to be reallocated by the board as follows:

First priority for reallocation shall be given to counties that meet the following criteria:

(1) Have a population of 150,000 or less or operate a single adult jail facility.

(2) The reallocated funds would enable the county to complete its jail construction needs as identified by the board.

(3) Have received final approval of their architectural drawings prior to the reallocation of reverted funds.

(4) Have the required 25 percent match applicable to any reallocated funds.

Priority for the reallocation of funds shall be determined by the date on which the board has given final approval to an eligible county's appropriate construction documents.

(d) If funds beyond those needed for the itemized amounts become available for reallocation, the board shall reallocate those funds under subdivision (c).

(e) It is the Legislature's intention that in any subsequent state bond measures for county jail construction assistance, first priority for the new moneys shall go for a grant of thirty-six million dollars ($36,000,000) for Los Angeles County; second, to any unfunded allocations under subdivision (b); and third, to any unfunded allocation among those listed in subdivision (c).

SEC. 14. Section 6.5 of Chapter 1519 of the Statutes of 1986 is amended to read:

Sec. 6.5. The Board of Corrections shall not approve the expenditure of funds appropriated by this act for the construction of county detention facilities until a master plan for county detention facilities has been prepared and adopted by the board of supervisors of the county proposing to construct the facility. The board of supervisors shall determine the location of any detention facilities pursuant to a master plan. In developing the plan, the board of supervisors shall consider alternatives to additional detention facilities and the specific concerns of incorporated cities and other community representatives, and shall give special consideration to existing federal, state, and local detention facilities in order to avoid overconcentration of inmates in one geographic area of the county. If the board of supervisors decides to locate new or expanded detention facilities near existing detention facilities, the board shall publicly state its reasons for that decision

The Board of Corrections shall only approve expenditure of funds appropriated by this act for the construction of detention facilities in accordance with the plan adopted pursuant to this section.

SEC. 15. Notwithstanding the date specified in subdivision (i) of Section 3 of Chapter 444 of the Statutes of 1984, as amended, the reports required by that subdivision and by subdivision (a) of Section 8 of Chapter 1519 of the Statutes of 1986 shall be made on July 1 of each year.

SEC. 16. Four hundred seventy-four million twenty-five thousand dollars ($474,025,000) is appropriated from the 1988 County Correctional Facility Capital Expenditure and Youth Facility Bond Fund without regard to fiscal year for allocation as follows:

(a) Sixty-four million twenty-five thousand dollars ($64,025,000) to the Department of the Youth Authority for allocation pursuant to Chapter 3 (commencing with Section 4497.20) of Title 4.85 of Part 3 of the Penal Code.

(b) Four hundred ten million dollars ($410,000,000) to the Board of Corrections for allocation pursuant to Chapter 2 (commencing

with Section 4497.02) of Title 4.85 of Part 3 of the Penal Code, and for administrative costs, but the administrative costs shall not exceed 1½ percent of the amount allocated. However, for any amount disbursed for a project entitled to receive funds under Section 3 of Chapter 444 of the Statutes of 1984, as amended, from the County Jail Capital Expenditure Bond Act of 1981, or the County Correctional Facility Capital Expenditure Bond Act of 1986, that amount shall be paid to the 1988 County Correctional Facility Capital Expenditure and Youth Facility Bond Fund to relieve prior commitments to the fund from any amounts that may become available under those earlier bond acts, including amounts derived under Section 4 of Chapter 444 of the Statutes of 1984 and Section 5 of Chapter 1519 of the Statutes of 1986.

SEC. 17. From money appropriated from the 1986 Prison Construction Fund that is obligated for the N. A. Chaderjian site development project, the sum of two hundred fifty thousand dollars ($250,000) is reappropriated to the Department of the Youth Authority for expanded vocational educational, and work experience program space.

SEC. 17.5. Section 2.5 of this bill incorporates amendments to Section 15026 of the Health and Safety Code proposed by both this bill and AB 2347. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 15026 of the Health and Safety Code, and (3) this bill is enacted after AB 2347, in which case Section 15026 of the Health and Safety Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 2347, at which time Section 2.5 of this bill shall become operative.

SEC. 18. Section 9 of this bill incorporates amendments to Section 20134 of the Public Contract Code proposed by both this bill and SB 745. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 20134 of the Public Contract Code, and (3) this bill is enacted after SB 745, in which case Section 20134 of the Public Contract Code, as amended by Section 8 of this bill, shall remain operative only until the operative date of SB 745, at which time Section 9 of this bill shall become operative.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to alleviate overcrowding in county correctional facilities at the earliest possible time and to facilitate that goal by clarifying the duties and makeup of the Board of Corrections, it is necessary that this act take effect immediately.

CHAPTER 1328

An act to amend Sections Sections 24162 and 24164 of, to add Section 24164.5 to, the Health and Safety Code, and to amend Sections 16991 and 16994 of the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 24162 of the Health and Safety Code, as added by Assembly Bill 75 of the 1989–90 Regular Session of the Legislature, is amended to read:

24162. (a) There is hereby created the Tobacco Education Oversight Committee in state government which shall advise the State Department of Health Services and the State Department of Education with respect to policy development, integration, and evaluation of tobacco education programs funded under this chapter, and for development of a master plan for the future implementation of tobacco education programs.

(b) The Tobacco Education Oversight Committee shall be composed of 11 members to be appointed as follows:

(1) Two members representing volunteer health organizations dedicated to the reduction of tobacco use appointed by the Speaker of the Assembly.

(2) One member representing an organization that represents health care employees appointed by the Senate Rules Committee.

(3) One member of a professional education association, such as an association of teachers, appointed by the Senate Rules Committee.

(4) One member of a university facility with expertise in programs intended to reduce tobacco use appointed by the Governor.

(5) Two representatives of a target population group appointed by the Governor.

(6) One representative of the State Department of Health Services appointed by the Governor.

(7) One representative of the State Department of Education appointed by the Superintendent of Public Instruction.

(8) One member representing the interests of the general public appointed by the Governor.

(9) One representative of local health departments appointed by the Governor.

(c) Members shall serve for a term of two years, renewable at the option of the appointing authority. The initial appointments of members shall be for two or three years, to be drawn by random lot

at the first meeting. The committee shall be staffed by the State Department of Health Services' coordinator of the program created pursuant to Section 24164.

(d) The committee shall meet as often as it deems necessary, but shall meet not less than four times per year.

(e) The members of the committee shall serve without compensation, but shall be reimbursed for necessary travel expenses incurred in the performance of the duties of the committee.

SEC. 2. Section 24164 of the Health and Safety Code, as added by Assembly Bill 75 of the 1989–90 Regular Session of the Legislature, is amended to read:

24164. To prevent tobacco-related diseases and diminish tobacco use, the State Department of Health Services shall do all of the following.

(a) Contract for an initial baseline survey and followup surveys of attitudes and behavior regarding tobacco use and a description of information received by the public regarding smoking and tobacco use. The department shall issue a request for proposals for the 1989–90 baseline study, evaluate proposals and select a contractor or contractors within 90 days of the effective date of this act.

(b) The department shall produce or contract for a description of programs recognized as effective in reducing smoking and tobacco use, and the identification of portions of target populations which need information regarding the hazards of tobacco use.

(c) Establish within the state department a program on tobacco use and health to promote the study of effective tobacco use interventions and behavior programs in community and other nonschool settings. By September 1, 1990, the state department shall develop a mechanism to implement a systematic and independent evaluation of the local and state programs established under this chapter. The purpose of the evaluation is to direct the most efficient allocation of resources appropriated under this chapter to accomplish the maximum prevention and reduction of tobacco use. This comprehensive evaluation shall be designed, to measure the extent to which programs funded under this chapter promote the goals identified in this chapter and in Proposition 99 of the November 1988 general election. The evaluation design shall do all of the following:

(1) Be based on sound evaluation principles and include, to the extent feasible, elements of controlled experimental methods.

(2) Monitor the overall statewide effect of health education efforts on smoking and tobacco use, and, to the extent feasible, the resulting effects on health.

(3) Monitor the effect of the programs on individual target populations identified by this chapter or designated by the state department as meriting special attention.

(4) Provide an evaluation of the comparative effectiveness of individual program designs which shall be used in funding decisions and program modifications.

(5) Incorporate other aspects into the evaluation which have been identified by the state department in consultation with state and local advisory groups, local lead agencies, and other interested parties.

(d) The state department shall provide a report to the Legislature on January 1, 1992, and each succeeding year on the progress of the evaluation.

(e) The state department and local lead agencies shall use the evaluation in the administration and allocation of funds awarded pursuant to this chapter in order to maximize the effectiveness of this program.

(f) Assist the State Department of Education in identifying and developing instructional materials and curricula in school-based programs, designed to enhance the prevention of and encouraging the cessation of the continuing use of, tobacco products. The materials and curricula shall address the specific needs of persons in kindergarten and grades 1 to 12, inclusive, and in adult education programs.

(g) (1) Contract with one or more qualified agencies for production and implementation of an ongoing public awareness of tobacco-related diseases by developing an information campaign using a variety of media approaches. The department shall issue a request for proposals for the 1989–90 media campaign, evaluate proposals submitted, and select a contractor or contractors within 120 days of the effective date of this section. Any media campaign funded with this part shall stress the importance of both preventing the initiation of tobacco use and quitting smoking and shall be based on professional market research and surveys necessary to determine the most effective method of diminishing tobacco use among specified target populations. Initial media efforts shall be directed to specific target populations. The contractors selected shall be provided with all available survey information resulting from ongoing programs funded under this chapter. Priority shall be given to minor children, ages 6 to 14, inclusive. The medium used shall be determined to be the most effective at reaching this targeted age group. With respect to the broadcast media, the message shall be aired at times expected to reach the priority age group. With respect to the print media, publications to be used shall be those which appeal to the priority age group.

(2) No media campaign funded pursuant to this chapter shall feature in any manner the image or voice of any elected public official or candidate for elected office, or directly represent the views of any elected public official or candidate for elected office.

(h) Provide training, consultation, support, and continuing education to health professionals, and others interested in developing programs and services directed at preventing tobacco use and promoting smoking cessation, utilizing, when available and determined by the state department, the expertise of universities in this state and schools of public health. The training, consultation,

support, and continuing education shall include advice and support in creating a smoke-free environment.

(i) Conduct an awards program to acknowledge the outstanding achievements of those communities, organizations, and groups that have fostered movement toward a smoke-free society or have reduced the consumption of tobacco.

(j) The department shall issue guidelines for local plans for education against tobacco use. The guidelines shall require local public health departments to provide services directed at preventing tobacco use and promoting smoking cessation to the target populations enumerated in Section 24161.5 and to persons under 19 years of age who no longer attend school and to youth attending school who are not served through State Department of Education funded programs. The guidelines shall require for each target population to be served a description of the services to be provided, an estimate of the number to be served, an estimate of the success rate, and a method to determine to what extent goals have been achieved. Beginning with 1990–91 fiscal year, guidelines shall require local lead agencies to describe how local funding decisions will take into account evaluations of program effectiveness and efficiency. The guidelines shall require the submission of a budget and information on staffing configurations.

(k) Within 90 days of the effective date of this chapter, the department shall issue guidelines for fiscal year 1989–90 and within nine months of the effective date of this chapter, the department shall issue guidelines to local lead agencies on how to prepare a local plan for a comprehensive community intervention program against tobacco use.

(*l*) Provide technical assistance to local lead agencies for the development of plans required by Section 24165.5 so that the local lead agencies are able to comply with the schedule for the submission of plans specified in Section 24165.5. The technical assistance shall include, but not be limited to, the following:

(1) Developing and disseminating preventive health education program options for local communities.

(2) Providing training, consultation, and technical assistance to local health departments, local advisory committees, and service providers.

(m) Receive and approve local plans submitted by local lead agencies and provide technical assistance and guidance as necessary to ensure the compliance of the local lead agencies with this chapter. Every effort shall be made to approve or provide a list of necessary amendments to a local plan within 30 days of receipt of the local plan. The state department may authorize a local lead agency to begin implementation of its local plan on a provisional basis, with final approval of the local plan contingent on satisfying conditions specified by the state department.

(n) Work in collaboration with the public and private sectors in implementing the activities required of the state department and

provide access upon request to local plans, program statistics, and other readily available information.

(o) Provide staff, assistance, and support needed by the committee.

(p) In consultation with the committee, develop a comprehensive master plan for implementing tobacco education programs throughout the state for the prevention and cessation of tobacco use.

(q) Consult regularly with the University of California regarding trends in the frequency and the cost of treating tobacco-related diseases and the success of research efforts to reduce tobacco use and limit its adverse health effects.

(r) Establish, in consultation with the State Department of Education and county offices of education, a data collection and data management program to study effective tobacco use interventions. Under this program the department may contract for studies and evaluations in school-based and community-based programs. The department shall consult with the State Department of Education regarding the collection and evaluation of program data.

(1) The department shall require, by contract, that local lead agencies use a uniform management data and information system which will permit comparisons of workload, unit costs, and outcome measurements on a statewide basis. The department shall specify data reporting requirements for local lead agencies and their subcontractors.

(2) The department shall approve local lead agency and grantee computer software and hardware in order to ensure systemwide compatibility and capacity to expand. Departmental guidelines for local plans shall require local lead agencies to set forth their hardware and software plans and needs.

(3) The department may contract for the development or operation of a computerized management information system.

(4) The department shall consult the State Department of Education regarding computer software and hardware systems for school-based programs.

(s) Develop in consultation with the California Conference of Local Health Officers, a formula for the allocation of funds to local lead agencies for anti-tobacco programs. The formula shall take into consideration the estimated number of persons in each target population to be served and likely variations in the costs of serving different target groups.

SEC. 3. Section 24164.5 is added to the Health and Safety Code, to read:

24164.5. (a) Funds appropriated for local lead agencies pursuant to this chapter shall be made in accordance with the following formula:

(1) Counties under 300,000 in population, except for counties eligible to participate in the California Healthcare for Indigents Program pursuant to Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code, as added

by Assembly Bill 75 of the 1989–90 Regular Session of the Legislature, shall receive an allocation based on each county's proportion of statewide population, or $150,000, whichever is greater.

(2) The balance of funds, after the allocation contained in paragraph (1) has been made, shall be allocated to all other counties in accordance with the following percentages:

County	Allocation
Alameda	4.7427%
Contra Costa	1.8032%
Fresno	2.6855%
Kern	1.7083%
Lake	0.1826%
Los Angeles	43.8057%
Mendocino	0.2664%
Merced	0.7244%
Monterey	1.2937%
Orange	5.1382%
Placer	0.3697%
Riverside	3.1828%
Sacramento	3.2922%
San Bernardino	3.7972%
San Diego	5.9971%
San Francisco	5.3898%
San Joaquin	1.7413%
San Luis Obispo	0.8096%
San Mateo	1.4582%
Santa Barbara	0.7918%
Santa Clara	5.2450%
Santa Cruz	0.7709%
Stanislaus	1.2793%
Tulare	1.3768%
Ventura	1.5472%
Yolo	0.6004%

(b) This section shall become operative only if Assembly Bill 75 of the 1989–90 Regular Session of the Legislature is enacted into law and becomes operative.

SEC. 4. Section 16991 of the Welfare and Institutions Code, as added by Assembly Bill 75 of the 1989–90 Regular Session of the Legislature, is amended to read:

16991. (a) The sum of twenty-six million five hundred ninety-seven thousand dollars ($26,597,000) is appropriated from the General Fund to the department, for the 1989–90 fiscal year, to be allocated to each county receiving funds pursuant to subdivision (d) of Section 16703. Each county's maximum allocation under this section shall be determined as follows:

(1) The sum of one hundred twenty-six million five hundred ninety-seven thousand dollars ($126,597,000) shall be multiplied by

each county's percentage determined by subdivision (d) of Section 16703.

(2) For each county, the percentage of persons newly legalized under the Immigration Reform and Control Act of 1986 (IRCA) who are residents of that county divided by the total of all IRCA newly legalized persons for all counties eligible to receive funds pursuant to this section shall be determined. The department shall utilize the most recent data from the federal Department of Health and Human Services for this purpose.

(3) Each county's percentage determined in paragraph (2) shall then be multiplied by one hundred twenty-six million five hundred ninety-seven thousand dollars ($126,597,000).

(4) For each county, the amount determined in paragraph (3) shall be subtracted from the amount determined in paragraph (1). If the resulting amount is negative, no funds shall be allocated to that county. If the resulting amount is positive, that amount shall be the county's maximum allocation and shall be made available to that county in the same manner and according to the same procedures and requirements that govern funds made available pursuant to subdivision (d) of Section 16703, except that the department shall make the payment of each county's allocation as determined above in one lump sum on or before January 1, 1990.

(5) If the sum of funding that a county received from its allocation pursuant to Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to Section 16703 in fiscal year 1988–89 the state shall reimburse the county for the amount of the difference For the 1990–91 fiscal year, if the sum of funding received from its allocation, pursuant to Section 16703 and the amount of reimbursement it received from State Legalization Impact Assistance Grant Funding for indigent care that year is less than the amount of funding the county received pursuant to Section 16703 in the 1988–89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement.

(6) The calculations specified in paragraph (5) shall be performed after the end of the fiscal year after all claims from a county for that fiscal year have been adjudicated. The calculations shall be performed within 90 days of the date that the final claim for a fiscal year is submitted by the county.

(7) If a county submits additional claims for services provided in a specific year and has received funds under paragraph (5) above for that year, the department shall reimburse the General Fund up to amount received under paragraph (5) from federal State Legalization Impact Assistance Grant funds otherwise payable to the county based upon the additional claims.

(b) In determining if a county has made reasonable efforts to document and claim federal State Legalization Impact Assistance Grant funding, the department may require a county to utilize statistically valid sampling methods or to utilize the federal Cost Documentation System for Social Security matching.

(c) To the extent allowed by federal law, the department shall make quarterly prospective payments of federal State Legalization Impact Assistance Grant funds to counties for the 1988–89, 1989–90, and 1990–91 fiscal years SLIAG claims for indigent health services. Prospective payments shall not exceed the total amount of a county's 1987–88 fiscal year claim, as adjusted by the department, on an annualized basis. As a condition of receiving a prospective payment, the county shall certify that it intends to submit claims exceeding the amount advanced. A county shall be liable for any overpayments or federal sanctions in the event of an excess drawdown of federal State Legalization Impact Assistance Grant funds.

(d) A county may apply for, and the Department of Finance may approve, a state General Fund loan in the 1989–90 fiscal year to meet anticipated shortfalls in their Medically Indigent Services Program. In order to receive funds, the county must demonstrate to the Department of Finance that the county will not submit 1989–90 claims totaling more than 50 percent of its estimated SLIAG amount as determined by its percentage of the newly-legalized population multiplied by the amount of total SLIAG funds available. The county shall also demonstrate that the county has made reasonable efforts to document and claim federal SLIAG funds as defined in paragraph (7) of subdivision (b) of Section 16991. In no event shall the loan amount exceed 50 percent of a county's percentage of the newly-legalized population multiplied by the amount of total SLIAG funds available, or exceed the amount to which the county is entitled pursuant to paragraph (5) of subdivision (a) of Section 16991. The loan shall be issued to the county in two equal installments on January 1, 1990, and April 1, 1990. The loan balance shall be credited in the amount of funds provided pursuant to paragraph (5) of subdivision (a) of Section 16991 upon receipt of the funds. Repayment shall include interest calculated at the rate earned by the Pooled Money Investment Account.

SEC. 5. Section 16994 of the Welfare and Institutions Code, as added by Assembly Bill 75 of the 1989–90 Regular Session of the Legislature, is amended to read:

16994. (a) (1) Ninety percent of the amount appropriated for the purposes of this article shall be allocated to MISP counties according to the percentages specified in this chapter.

(2) The remaining 10 percent shall be allocated to CMSP counties, according to the following procedures:

(A) Calculating the sum of uncompensated care costs for all hospitals in each CMSP county.

(B) Divide the sum of subparagraph (A) by the sum of uncompensated care costs for all hospitals with all CMSP counties.

(C) Multiply the quotient derived from the application of subparagraph (B) by the total amount appropriated for the purposes of this article.

(b) Funding utilized under this section shall be for capital expenditure and equipment acquisition purposes associated with the direct delivery of patient care. In addition, each county may utilize up to two million ($2,000,000) or 25 percent of its allocation under this section, whichever is greater, on a one-time basis only in the 1989–90 fiscal year to restore county special fund balances to their July 1, 1988, levels. Funds from this section may be allocated for this purpose only in circumstances where the county board of supervisors transferred moneys from those special funds the county general fund or from the general fund to health facilities enterprise funds in order to support indigent health care services in the 1988–89 fiscal year. All capital outlay moneys under this section utilized to restore county special fund or general fund balances must be appropriated for capital expenditures and equipment acquisition associated with the direct delivery of patient care in the 1990–91 fiscal year.

(c) Except as provided in subdivision (a), no less than 67 percent of the moneys a county receives under this section shall be allocated to county acute care hospitals, University of California hospitals, or any private hospital licensed pursuant to subdivision (d) of Section 1250 of the Health and Safety Code, which operates an emergency room or a burn unit or outpatient clinic. The moneys may be expended for facility repair, renovation, remodeling, expansion, or acquisition or equipment needs.

(d) Except as provided in subdivision (b), up to 33 percent of the moneys a county receives under this section may be expended for capital improvement and equipment needs for outpatient clinics, or mental health facilities, or public health clinics or licensed community and free clinics or clinics operated by tribes or tribal organizations

(e) Noncounty hospitals shall utilize funds received under this section only for capital expenditures related to emergency room, burn unit, and outpatient clinics.

(f) County hospitals may utilize funds received under this section for expenditures related to inpatient, outpatient, emergency room, or burn unit services.

(g) Funds utilized from this section shall be for capital expenditure purposes associated with the direct treatment of patients.

(h) Each county receiving moneys under this section shall submit a plan for the use of these moneys to the department for review and approval prior to making any commitment for the expenditure of such funds. Any subsequent revision to the county's capital improvements plan shall also be submitted for review and approval. The department's approval authority shall be limited to a determination of whether the county's plan conforms to statutory provisions as contained in this section and part. The department may

establish necessary procedures and forms for the submission, review, and approval of county plans and reports.

(i) The expenditure of moneys authorized by this section may be made without regard to fiscal year provided that moneys authorized by this section shall be available for encumbrance for three fiscal years and for expenditure for five fiscal years, including the 1989–90 fiscal year. At the end of five years any moneys which have not been expended shall be recouped by the department.

(j) Counties shall submit an annual report, in accordance with guidelines provided by the department, detailing the use and actual expenditure of moneys received pursuant to this section. The department shall recoup the amount of any county expenditure which does not conform to the provisions of this section.

(k) Funds provided under this section shall be added to the allocations and payments to MISP counties pursuant to this chapter and to CMSP counties pursuant to this chapter.

(*l*) For the purposes of this section, "capital expenditures" means expenditures for fixed assets, major movable equipment, fixtures, structures, and improvements as defined for counties in "Accounting Standards and Procedures for Counties" issued by the Office of the Controller, Division of Local Government, Fiscal Affairs and for other providers as defined by generally accepted standards of accounting practices.

SEC. 6. Sections 1 to 5, inclusive, of this act shall not become operative unless and until Assembly Bill 75 of the 1989–90 Regular Session of the Legislature is enacted into law prior to this bill, becomes operative, and adds Sections 24162 and 24164 of, the Health and Safety Code, and adds Sections 16991 and 16994 to the Welfare and Institutions Code.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to fully implement the provisions of Assembly Bill No. 75 of the 1989–90 Regular Session it is necessary that this act take effect prior to January 1, 1990.

CHAPTER 1329

An act to amend Section 50805 of, and to add Section 50805.3 to, the Health and Safety Code, relating to housing.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989.]

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

SECTION 1. 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.

(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.

(e) The last sentence of subdivision (b) of Section 53130 shall apply to this chapter.

SEC. 2. Section 50805.3 is added to the Health and Safety Code, to read:

50805.3. Grants awarded pursuant to this chapter may be used,

with the approval of the department, exclusively for operating expenses for shelter and service programs for homeless people. These funds need not be expended in combination with the purchase, lease, renovation, repair, or equipping of buildings. Grants exclusively for operating and service costs pursuant to this section shall be ranked and rated pursuant to Section 50802, except that there shall be no consideration given to the fact that there are no expenditures for acquisition, rehabilitation, or equipment purchases. All other requirements of this chapter shall apply to grants requested and awarded pursuant to this section. Grants may be used to provide vouchers for privately owned temporary housing which meets all local government health and safety standards.

CHAPTER 1330

An act to add and repeal Article 8.7 (commencing with Section 424.10) to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, relating to tobacco-related diseases.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Article 8.7 (commencing with Section 424.10) is added to Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, to read:

Article 8.7. Cigarette and Tobacco Products Surtax Medical Research Program

424.10. (a) The Legislature finds and declares the following:

(1) Smoking is the single most important source of preventable disease and premature death in California.

(2) More than 30 percent of coronary heart disease is attributable to cigarette smoking.

(3) More than 30 percent of all annual cancer deaths are attributable to smoking, with lung cancer now the leading cancer killer in women, as well as men.

(4) More than 80 percent of chronic obstructive lung diseases, including emphysema and chronic bronchitis, are caused by smoking.

(5) Smoking is responsible for one-quarter of all deaths caused by fire.

(6) The elimination of smoking is the number one weapon against four of the five leading causes of death in California.

(7) One of the principal purposes of the Tobacco Tax and Health Protection Act of 1988, an initiative enacted into law by Proposition

99 of 1988, is to "support medical research into tobacco-related cancer, heart, and lung diseases," and 5 percent of the surtax revenues are designated to fund tobacco-related disease research.

(8) California has the benefit of world renowned public and private universities conducting high quality health research to draw upon for this purpose.

(b) It is the intent of the Legislature to provide for the creation of a Cigarette and Tobacco Products Surtax Medical Research Program to support medical research into tobacco-related disease. It is the intent of the Legislature that this program be administered by the University of California and that this program be administered pursuant to the following principles:

(1) The research program established should adhere to the objectives stated in the provisions of the initiative act entitled Cigarette and Tobacco Products Surtax regarding research: "The Research Account... shall only be available for tobacco-related disease research."

(2) All research funds shall be awarded on the basis of scientific merit as determined by an open, competitive peer review process that assures objectivity, consistency, and high quality. All qualified investigators, regardless of institutional affiliation, shall have equal access and opportunity to compete for the funds in the Research Account.

(3) The peer review process for the selection of grants awarded under this program shall be modeled on that used by the National Institutes of Health in its grants-making process.

(4) Awardees shall be reimbursed for the full cost, both direct and indirect, of conducting the sponsored research consistent with federal guidelines governing all federal research grants and contracts.

424.20. The Legislature hereby requests the University of California to establish a comprehensive grant program to support research efforts related to the prevention, causes, and treatment of tobacco-related diseases. It is the intent of the Legislature that the program incorporate the principles and organizational elements specified in this article, including, but not limited to, a program office with a director and other necessary staff, a scientific advisory committee and research review panels.

424.30. For the purposes of this article:

(a) "Grantee" means any qualifying public, private, or nonprofit agency or individual including, but not limited to, colleges, universities, hospitals, laboratories, research institutions, local health departments, voluntary health agencies, health maintenance organizations, and individuals conducting research in California.

(b) "Indirect costs" includes such items as use allowance for research facilities, heating, lighting, library services, health and safety services, project administration, and building maintenance, as defined by federal cost accounting guidelines for federally sponsored research.

(c) "Tobacco-related disease" includes, but is not limited to, the following:

(1) Coronary heart disease.

(2) Cerebrovascular disease.

(3) Cancer, including cancers of the lung, larynx, esophagus, bladder, pancreas, and mouth.

(4) Chronic obstructive lung disease, including emphysema, chronic bronchitis, asthma, and related lung disorders.

(5) Other conditions or diseases that smoking or tobacco use have been established to be a risk factor for excess disability and illness.

(d) "Tobacco-related disease research" includes, but is not limited to, research in the fields of biomedical science, the social and behavioral sciences, epidemiology, and public health.

(e) "University" means the University of California.

424.40. It is the intent of the Legislature that the university establish a scientific advisory committee to provide advice to the president of the university as to the direction, scope, and progress of the research program.

(a) Responsibilities of the committee may include, but are not limited to:

(1) Provision of advice on program priorities and emphasis.

(2) Provision of advice on overall program budget.

(3) Participation in periodic program evaluation.

(4) Assistance in developing guidelines to assure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program.

(5) Assistance in developing appropriate linkages to nonacademic entities such as voluntary organizations, health care delivery institutions, industry, government agencies, and public officials.

(b) Responsibilities of the committee may additionally include:

(1) Development of criteria and standards for grant awards.

(2) Development of administrative procedures relative to the solicitation, review, and award of grants to ensure an impartial, high quality peer review system.

(3) Development and supervision of research review panels.

(4) Review of research review panel reports and recommendations for grant awards.

(5) Development and oversight of mechanisms for the dissemination of research results.

(c) It is the intent of the Legislature that the committee consist of at least eight members representing a range of scientific expertise and experience appointed by the president of the university from nominations submitted by relevant organizations, as follows:

(1) Three members from voluntary health organizations dedicated to the reduction of tobacco use.

(2) One member with expertise in the field of biomedical research.

(3) One member with expertise in the field of behavioral or social research.

(4) One member from professional medical or health organizations.

(5) One member from an independent research university in California.

(6) One member drawn from other institutions engaged in research directed at tobacco-related diseases.

(d) Committee membership shall be drawn from the ranks of bona fide scientists and individuals fully conversant with the norms of scientific inquiry.

(e) Members shall serve at the pleasure of the President of the University of California. Membership may be staggered in such a way as to maintain a full committee while ensuring a reasonable degree of continuity of expertise and consistency of direction.

(f) Members shall serve without compensation, but may receive reimbursement for travel and other necessary expenses actually incurred in the performance of their official duties.

424.55. It is the intent of the Legislature that the university utilize peer review panels modeled upon the National Institutes of Health peer review process to review all research grants. The membership of these panels shall vary depending on the subject matter of proposals and review requirements, and shall draw on the most qualified individuals from appropriate institutions within and outside of California and from within and without the University of California system. The work of the peer review panels shall be administered pursuant to policies and procedures established by the scientific advisory committee. In order to avoid conflicts of interest and to ensure access to qualified reviewers, the university may utilize reviewers not only from California but also from outside the state. When serving on peer review panels, individuals who have submitted grant applications for funding by this program shall be governed by conflict of interest provisions consistent with the National Institutes of Health Manual, Chapter 4510 (item h).

424.60. Research projects funded under this article may include, but are not limited to:

(a) Individual investigator-generated grants. These grants may be awarded to an institution on behalf of a principal investigator for a discrete project related to the investigator's interests and competence.

(b) New investigator grants. These grants may be awarded to an institution to support the work of promising individuals in the initial stages of their research careers.

(c) Center grants. These grants may be awarded to institutions on behalf of a principal investigator and a group of collaborating investigators providing support for long-term multidisciplinary programs of research and development.

(d) Conference grants. These grants may be awarded for funding of conferences in California to coordinate, exchange, and disseminate information related to specific research efforts. These grants may fund honoraria and travel expenses for invited

participants from outside of California.

424.70. It is the intent of the Legislature that the university, as lead agency, do all of the following:

(a) Provide overall direction and coordination of the program.

(b) Provide staff assistance to the advisory committee and review panels.

(c) Provide for periodic program evaluation, to assure that work funded is consistent with program goals.

(d) Maintain a system of financial reporting and accountability.

(e) Transmit programmatic as well as financial reports to the state, including an annual report on grants made, grants in progress, program accomplishments and future program directions.

(f) Provide for the systematic dissemination of research results to the public and the health care community, and to provide for a mechanism to disseminate the most current research findings in the areas of smoking cessation and the prevention of tobacco use in order that these findings may be applied to the implementation of the Health Education Account.

(g) Develop policies and procedures to facilitate the translation of research results into commercial applications wherever appropriate.

424.80. It is the intent of the Legislature that projects funded under this article be reimbursed for actual costs, including direct costs and indirect costs incurred by a research institution consistent with federal guidelines. Indirect cost rates shall not exceed those allowable by the federal government for federally sponsored research. With respect to those institutions which have not negotiated a federal indirect cost reimbursement rate, the university will request information to verify the indirect cost rates.

424.90. It is the intent of the Legislature that no more than 5 percent of the Research Account be used for the purposes of the administration of this article.

424.95. No provision of this article shall apply to the University of California unless the regents of the university, by resolution, make that provision so applicable.

424.97. This article shall remain in effect only until December 31, 1993, and as of that date is repealed, unless a later enacted statute deletes or extends that date.

SEC. 2. The University of California is requested to provide a report on or before December 31, 1990, and annually thereafter, to the Legislature relating to the research grants awarded with funds provided for tobacco-related disease research pursuant to Article 8.7 (commencing with Section 424.10) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code. The report shall include the following information for each campus and institution that receives grant awards:

(a) The number and dollar amounts of research grants, including the amount allocated to indirect costs.

(b) The subject of research grants by academic discipline.

(c) The relationship between state and federal funding for

tobacco research.

(d) The relationship between each project and the overall strategy of the research program.

(e) A summary of research findings.

(f) The number and dollar amounts of research grants that involved the use of animals.

(g) The number and species of animals used in research.

(h) The number and dollar amounts of research grants that utilized animal alternative methods as defined by the United States Office of Technology Assessment's 1986 report entitled "Alternatives to Animal Use in Research, Testing and Education."

This section shall remain in effect only until December 31, 1993, and as of that date is repealed unless a later enacted statute deletes or extends that date.

CHAPTER 1331

An act to amend, repeal, and add Sections 443.32 and 1216 of, to add and repeal Section 16709.5 of, to add and repeal Part 6.9 (commencing with Section 1189.101) of Division 1 of, to add and repeal Chapter 1.2 (commencing with Section 24160) of Division 20 of, the Health and Safety Code, to amend, repeal, and add Section 16709 of, to add and repeal Section 14148.6 of, to add and repeal Part 4.7 (commencing with Section 16900) of Division 9 of, to repeal, add, and repeal Section 14148.5 of, the Welfare and Institutions Code, relating to health care, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. (a) It is the intent of the Legislature to comply with the wishes of California voters in appropriating revenues from the Cigarette and Tobacco Products Surtax Fund. To that end, it is the intent of the Legislature that funds from the Cigarette and Tobacco Surtax Fund be used only for the following purposes:

(1) Programs for the prevention and reduction of tobacco use, primarily among children through school and community health education programs.

(2) Payment to public and public hospitals licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code for the treatment of hospital patients who are unable to pay for that treatment and for whom payment for hospital services will not be made through private coverage or by any program funded in whole or in part by the federal government.

(3) Payment to physicians for services to patients who are unable

to pay for those services, and for whom payment for physician services will not be made through private coverage or by any program funded in whole or in part by the federal government.

(b) It is the further intent of the Legislature in enacting these programs to achieve the following goals:

(1) To maintain the integrity of existing public and private systems of delivering care to uninsured persons unable to pay for their own care.

(2) To improve the health status of low-income children and pregnant women without any other available health coverage.

(3) To improve reimbursement of public and private providers for emergency care to uninsured persons unable to pay for care and to reduce the volume of uncompensated care in those facilities with the heaviest burden of uncompensated emergency services.

(4) To improve access to primary care and reduce reliance on emergency rooms by the medically indigent.

(5) To use Proposition 99 funds to supplement existing state and county spending and programs in order to improve access to appropriate health care for the uninsured.

(6) To provide adequate funding for county health services in order to ensure basic minimum coverage of medically necessary health services to low income uninsured Californians.

SEC. 1.1. Section 443.32 of the Health and Safety Code is amended to read:

443.32. Commencing with the first calendar quarter of 1986, and ending with the last quarter of 1990, summary financial and utilization data shall be reported to the office by each hospital within 45 days of the end of every calendar quarter. Adjusted reports reflecting changes as a result of audited financial statements may be filed within four months of the close of the hospital's fiscal or calendar year. The quarterly summary financial and utilization data shall conform to the uniform description of accounts as contained in the Accounting and Reporting Manual for California Hospitals and shall include all of the following:

(a) Number of licensed beds.

(b) Average number of available beds.

(c) Average number of staffed beds.

(d) Number of discharges.

(e) Number of inpatient days.

(f) Number of outpatient visits.

(g) Total operating expenses.

(h) Total inpatient gross revenues.

(i) Total outpatient gross revenues.

(j) Total deductions from revenue, including bad debts, charity care, and Medicare and Medi-Cal contractual allowances.

(k) Total capital expenditures.

(*l*) Total net fixed assets.

(m) Total number of inpatient days, outpatient visits, and discharges by payer source, including Medi-Cal, Medicare, and other

sources.

(n) Total net patient revenues by payer source, including, but not limited to, Medicare, Medi-Cal, and other payers.

Hospitals reporting pursuant to subdivision (d) of Section 443.34 may provide the items in subdivisions (g), (h), (i), (j), and (n) of this section on a group basis, as described in subdivision (d) of Section 443.34.

The office shall make available at cost, to all interested parties, a hard copy of any hospital report made pursuant to this section and in addition to hard copies, shall make available at cost, a computer tape of all reports made pursuant to this section within 105 days of the end of every calendar quarter.

(o) The office, with the advice of the commission, shall adopt by regulation guidelines for the identification, assessment, and reporting of charity care services. In establishing the guidelines, the office shall consider the principles and practices recommended by professional health care industry accounting associations for differentiating between charity services and bad debts. The office shall further conduct the onsite validations of health facility accounting and reporting procedures and records as are necessary to assure that reported data are consistent with regulatory guidelines.

(p) 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. 1.2. Section 443.32 is added to the Health and Safety Code, to read:

443.32. (a) Commencing with the first calendar quarter of 1991, the following summary financial and utilization data shall be reported to the office by each hospital within 45 days of the end of every calendar quarter. Adjusted reports reflecting changes as a result of audited financial statements may be filed within four months of the close of the hospital's fiscal or calendar year. The quarterly summary financial and utilization data shall conform to the uniform description of accounts as contained in the Accounting and Reporting Manual for California Hospitals and shall include all of the following:

(1) Number of licensed beds.

(2) Average number of available beds.

(3) Average number of staffed beds.

(4) Number of discharges.

(5) Number of inpatient days.

(6) Number of outpatient visits.

(7) Total operating expenses.

(8) Total inpatient gross revenues by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(9) Total outpatient gross revenues by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(10) Deductions from revenue in total and by component, including the following: Medicare contractual adjustments, Medi-Cal contractual adjustments, and county indigent program contractual adjustments, other contractual adjustments, bad debts, charity care, restricted donations and subsidies for indigents, support for clinical teaching, teaching allowances, and other deductions.

(11) Total capital expenditures.

(12) Total net fixed assets.

(13) Total number of inpatient days, outpatient visits, and discharges by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, self-pay, charity, and other payers.

(14) Total net patient revenues by payer including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(15) Other operating revenue.

(16) Nonoperating revenue net of nonoperating expenses.

(b) Hospitals reporting pursuant to subdivision (d) of Section 443.34 may provide the items in paragraphs (7), (8), (9), (10), (14), (15), and (16) of subdivision (a) on a group basis, as described in subdivision (d) of Section 443.34.

(c) The office shall make available at cost, to all interested parties, a hard copy of any hospital report made pursuant to this section and in addition to hard copies, shall make available at cost, a computer tape of all reports made pursuant to this section within 105 days of the end of every calendar quarter.

(d) The office, with the advice of the commission, shall adopt by regulation guidelines for the identification, assessment, and reporting of charity care services. In establishing the guidelines, the office shall consider the principles and practices recommended by professional health care industry accounting associations for differentiating between charity services and bad debts. The office shall further conduct the onsite validations of health facility accounting and reporting procedures and records as are necessary to assure that reported data are consistent with regulatory guidelines.

This section shall become operative January 1, 1991.

SEC. 2. Part 6.9 (commencing with Section 1189.101) is added to Division 1 of the Health and Safety Code, to read:

PART 6.9. EXPANDED ACCESS TO PRIMARY CARE

1189.101. (a) The State Department of Health Services shall select primary care clinics that are exempt from federal taxation and community based, including clinics operated by tribes or tribal organizations, to be reimbursed for delivering medical services, and preventative health care, including smoking prevention and cessation health education, to program beneficiaries. In selecting primary care clinics for reimbursement, the department shall give priority to clinics that provide services in a medically underserved area or to a medically underserved population as determined by the

department.

(b) As a part of the award process for funding pursuant to this part, the department shall take into account the availability of primary care services in the various geographic areas of the state. The department shall determine which areas within the state have populations which have clear and compelling difficulty in obtaining access to primary care. The department shall consider proposals from new and existing eligible providers to extend clinic services to these populations. The department shall give equal consideration to all applicants, regardless of whether or not they have an existing contract with the department.

(c) Each primary care clinic applying for funds pursuant to this part shall demonstrate that the funds shall be used to expand medical services, and preventative health care, including smoking prevention and cessation health education, for program beneficiaries.

(d) The department shall make prospective interim payments to the selected primary care clinics for outpatient visits, on at least a quarterly basis, based on the primary care clinic's projected increase in outpatient visits as compared to the outpatient visits provided in the 1988 calendar year, and shall adjust such payments to correct for any underestimates or overestimates of outpatient visits. The department may also pay primary care clinics on a separate basis for case management services provided as a result of these outpatient visits.

(1) For purposes of this part, an outpatient visit shall include preventive health services, diagnosis and treatment services, and the associated pharmacy, X-ray, and laboratory services that are needed as a result of the outpatient visit. For a new patient, an outpatient visit shall also include a health assessment encompassing an assessment of smoking behavior and appropriate health education.

(2) "Case management" includes, for this purpose, the management of all physician services, both primary and specialty, and arrangements for hospitalization, postdischarge care, and followup care.

(3) Payment shall be on a per visit basis at a rate that is determined by the department to be appropriate for an outpatient visit as defined in this section.

In developing a statewide uniform rate for an outpatient visit as defined in this part, the department shall consider existing rates of payments for comparable outpatient visits. The rate shall be published in accordance with subdivision (e). The department shall review the outpatient visit rate on an annual basis.

(4) The department may also pay for case management services, and may establish a separate, uniform statewide rate for these services which shall be paid in addition to the outpatient visit rate. The rate for case management shall not exceed 5 percent of the rate for an outpatient visit. If, upon establishment of the outpatient visit rate, the department determines that the rate of payment for case

management is not adequate to cover the cost of the service, the department may increase the rate for case management, but the rate shall not exceed 10 percent of the outpatient visit rate.

In developing the separate, uniform statewide rate for case management, the department shall take into account rates paid to providers for case management services under any other program funded in whole or in part by the state or federal government. The rates shall be published in accordance with subdivision (e). The department shall review the case management rate on an annual basis.

(5) A primary care clinic may, at its option, and with department approval, provide and be paid for both outpatient visits and case management services.

(e) Not later than January 15 of each year, the department shall adopt and provide each clinic with a schedule for programs under this part, including the date for notification of availability of funds, the deadline for the submission of a completed application, and an anticipated contract award date for successful applicants.

1189.102. For purposes of this part, a "program beneficiary" is any person whose income level is at or below 200 percent of the federal poverty level. Program beneficiaries shall not be required to provide any copayment for services that are funded pursuant to this part. The department shall annually adjust this income standard to reflect any changes in the federal poverty level. Payment pursuant to this part shall be made only for services for which payment will not be made through any private or public third-party reimbursement.

1189.103. (a) Any clinic applying for funds under this part shall demonstrate in its application that it is providing primary care services, to a medically underserved area or population. Any applicant who has applied for and received a federal or state designation for serving a medically underserved area or population shall be deemed to meet the requirements of subdivision (a) of Section 1189.101 In addition, the applicant shall demonstrate to the satisfaction of the department that the proposed services supplement, and do not supplant, those primary care services to program beneficiaries that are funded by any county, state, or federal program.

(b) Each application shall be evaluated by the state department prior to funding to determine all of the following:

(1) The number of program beneficiaries who are in the service area of the applicant, and the number of visits, the scope of primary care services, and the proposed total budget for outpatient visits provided to beneficiaries under this part. The applicant shall provide its most recently audited financial statement to verify budget information.

(2) The applicant's ability to deliver basic primary care to program beneficiaries within the contract allowance.

(3) A description of the applicant's operational quality assurance

program.

(4) The applicant's use of protocols for the most common diseases in the population served under this part.

1189.104. Services funded pursuant to this part shall be limited to the extent that funds are appropriated for this purpose.

1189.105 The Legislature finds and declares that an expedited contract process is necessary for the purposes of this part, in order that additional medical care services may be made available to persons who are unable to pay for medical care.

Contracts for services reimbursed under this part shall be for a period of one year and shall be renewed annually provided the applicant continues to meet the terms and conditions of the contract.

1189.106. The department shall submit a report on its activities under this part to the Legislature no later than January 1, 1991, and annually thereafter.

1189.109. As a condition of receiving funds under this article, a clinic shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 323.7 of the Health and Safety Code upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

From funds appropriated for the 1989–90 fiscal year, not more than ten million dollars ($10,000,000) may be utilized by the department for grants to clinics for modernization of clinic facilities and for expansion of primary care capacity in order to provide adequate access to clinic services.

1189.110. Any entity or provider which receives funds pursuant to this part shall expend those funds in accordance with the requirements of Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code.

1189.111. This part shall remain operative only until July 1, 1991, and 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 1216 of the Health and Safety Code is amended to read:

1216. (a) Every clinic holding a license shall, on or before the 15th day of February each year, file with the Office of Statewide Health Planning and Development upon forms to be furnished by the office, a verified report showing the following information relating to the previous calendar year:

(1) Number of patients served and the number of visits.

(2) Total clinic operating expenses.

(3) Total gross patient care-related revenue.

(4) Total deductions from revenue, including bad debts, charity

care, and medicare and Medi-Cal contractual allowances.

(5) County Medical Services Program (CMSP) charges.

(6) Medically Indigent Services Program (MISP) charges.

(7) County-sponsored patient charges.

(8) State Legalization Impact Assistance Grant charges (SLIAG).

(9) Additional information as may be required by the office or the department.

(b) In the event a clinic fails to file a timely report, the department may suspend the license of the clinic until the report is completed and filed with the office.

(c) This section shall remain operative only until July 1, 1991, and shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a lter enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 3.1. Section 1216 is added to the Health and Safety Code, to read:

1216. Every clinic holding a license shall, on or before the 15th day of February each year, file with the licensing and certification division of the state department and the Office of Statewide Health Planning and Development upon forms to be furnished by the state department, a verified report showing the following:

(a) Number of patients during the preceding year.

(b) Total number of administrative or other charges or fees collected from patients.

(c) Total amount from other sources necessary to make up the total operating cost of the clinic for the previous year.

(d) Total operating cost for clinic for the previous year.

(e) Additional information as may be required by regulation of the state department.

In the event a clinic fails to file a timely report, the state department may suspend the license of the clinic until such time as the report is completed and filed with the state department.

SEC. 4. Chapter 1.2 (commencing with Section 24160) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 1.2. TOBACCO USE PREVENTION

24160. (a) The Legislature finds and declares as follows:

(1) Smoking is the single most important source of preventable disease and premature death in California.

(2) More than 30 percent of coronary heart disease cases are attributable to cigarette smoking.

(3) More than 30 percent of all annual cancer deaths are attributable to smoking, with lung cancer now the leading cancer killer in women as well as men.

(4) Smoking is responsible for one-quarter of all deaths caused by fire.

(5) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.

(6) More than 80 percent of chronic obstructive lung diseases including emphysema and chronic bronchitis are attributable to smoking.

(7) Tobacco-related disease places a tremendous financial burden upon the persons with the disease, their families, the health care delivery system, and society as a whole. California spends five billion six hundred million dollars ($5,600,000,000) a year in direct and indirect costs on smoking-related illnesses.

(8) The elimination of smoking is the number one weapon against four of the five leading causes of death in California.

(9) Keeping children and young adults from beginning to use tobacco and encouraging all persons to quit tobacco use shall be the highest priority in disease prevention for the State of California. More than 60 percent of all smokers begin smoking by the age of 14, and 90 percent begin by the age of 19.

(10) The State of California shall play a leading role in promoting a smoke-free society by the year 2000 and thereby supporting the National Health Status Objectives for the year 2000 relating to smoking and tobacco use.

(b) It is the intent of the Legislature, therefore, to require the State Department of Health Services, local lead agencies, and the State Department of Education to cooperatively and individually conduct activities directed at the prevention of tobacco use and tobacco-related diseases. The campaign shall focus on health promotion, disease prevention, and risk reduction, utilizing a "wellness" perspective that encourages self-esteem and positive decisionmaking techniques. It is also the intent of the Legislature that, for the purpose of program planning and program evaluation, the State Department of Health Services provide data and technical information on tobacco-related diseases, tobacco use and its consequences, and effective personal and community interventions to prevent tobacco use.

24161. The following definitions shall apply to this chapter:

(a) "Grantee" means any public or private nonprofit entity approved by the State Department of Health Services or the State Department of Education to receive funds pursuant to this chapter. Grantees may include, but are not limited to, hospitals, community clinics, local health departments, voluntary health organizations, Indian tribes, colleges and universities, county offices of education, school districts, health maintenance organizations, professional health associations, and professional health education associations.

(b) "Tobacco-related disease" means any of the following:

(1) Coronary heart disease.

(2) Cerebrovascular disease.

(3) Cancer, including cancers of the lung, larynx, esophagus, bladder, pancreas, and mouth.

(4) Chronic obstructive lung diseases, including emphysema, chronic bronchitis, asthma, and related lung disorders.

(5) Conditions where smoking or tobacco use has been

determined to be a risk factor for excess disability and illness, including burns due to smoking-related fires.

(c) "Tobacco use" means the consumption of tobacco products by burning, chewing, inhalation, or other forms of ingestion.

(d) "Voluntary health organization" means a nonprofit organization which is organized for purposes related to health, such as an organization devoted to the research of cancer, heart disease, or diseases of the lung.

(e) "Committee" means the Tobacco Education Oversight Committee.

(f) "State department" means the State Department of Health Services.

(g) "Service provider" means an agency or organization which enters into an agreement with the local lead agency or state department to provide services under this chapter.

(h) "Direct services" means the provision of preventive health education services to targeted populations.

(i) "Local plan" means a plan submitted pursuant to Section 24165.5.

(j) "Preventive health education against tobacco use" means programs of instruction intended to dissuade individuals from beginning to smoke, to encourage smoking cessation, or to provide information on the health effects of tobacco on the user, children, and nonsmokers. These programs may include a focus on health promotion, disease prevention, and risk reduction, utilizing a "wellness perspective" that encourages self-esteem and positive decisionmaking techniques.

(k) "Targeted populations" means those population groups specified in Sections 24161.5 and 24165.

(*l*) "Local lead agencies" means those agencies designated as local lead agencies pursuant to Section 24165.5.

24161.5. The following target populations, at a minimum, shall be the focus of the campaign implemented pursuant to this chapter:

(a) School-age youth and their families in the schools and in the community.

(b) Black, Hispanic, Native American, and Asian-Pacific American populations, pregnant women, and current smokers.

24162. (a) There is hereby created the Tobacco Education Oversight Committee in state government which shall advise the State Department of Health Services and the State Department of Education with respect to policy development, integration, and evaluation of tobacco education programs funded under this chapter, and for development of a master plan for the future implementation of tobacco education programs.

(b) The Tobacco Education Oversight Committee shall be composed of 11 members to be appointed as follows:

(1) Two members representing volunteer health organizations dedicated to the reduction of tobacco use appointed by the Speaker of the Assembly.

(2) One member representing a voluntary health organization dedicated to the reduction of tobacco use appointed by the Senate Rules Committee.

(3) One member of a professional education association, such as an association of teachers, appointed by the Senate Rules Committee.

(4) One member of a university facility with expertise in programs intended to reduce tobacco use appointed by the Governor.

(5) Two representatives of a target population group appointed by the Governor.

(6) One representative of the State Department of Health Services appointed by the Governor.

(7) One representative of the State Department of Education appointed by the Superintendent of Public Instruction.

(8) One member representing the interests of the general public appointed by the Governor.

(9) One representative of local health departments appointed by the Governor.

(c) Members shall serve for a term of two years, renewable at the option of the appointing authority. The initial appointments of members shall be for two or three years, to be drawn by random lot at the first meeting. The committee shall be staffed by the State Department of Health Services' coordinator of the program created pursuant to Section 24164.

(d) The committee shall meet as often as it deems necessary, but shall meet not less than four times per year.

(e) The members of the committee shall serve without compensation, but shall be reimbursed for necessary travel expenses incurred in the performance of the duties of the committee.

24163. The committee shall be advisory to the State Department of Health Services and State Department of Education for the following purposes.

(a) Evaluation of school- and community-based programs funded under this chapter as necessary in order to assess the overall effectiveness of efforts made by the programs to reduce the use of tobacco products. In order to evaluate tobacco education and cessation programs, the committee shall seek the cooperation and assistance of the State Department of Health Services, the State Department of Education, county offices of education, local lead agencies, administrative representatives, target populations, school officials, and researchers. A principal measurement of effectiveness shall be reduction of smoking rates among a given target population.

(b) Facilitation of programs directed at reducing and eliminating tobacco use that are operated jointly by more than one agency or entity. The committee shall propose strategies for the coordination of proposed programs administered by the State Department of Health Services and the State Department of Education in order to avoid the duplication of services and to maximize the public benefit

of the programs.

(c) Make recommendations to the State Department of Health Services and the State Department of Education regarding the most appropriate criteria for the selection of, standards of the operation of, and the types of programs to be funded under this chapter.

(d) Reporting to the Legislature on or before January 1 of each year on the number and amount of tobacco education programs funded by the Health Education Account, created by Section 30122 of the Revenue and Taxation Code, the amount of money in the account, any moneys previously appropriated to be State Department of Health Services and the State Department of Education but unspent by the departments, a description and assessment of all programs funded under this chapter, and recommendations for any necessary policy changes or improvements for tobacco education programs.

(e) Ensuring that the most current research findings regarding tobacco use prevention are applied in designing the tobacco education programs administered by the State Department of Health Services and the State Department of Education. The State Department of Health Services and the State Department of Education shall apply the most current findings and recommendations of research including research funded by the Research Account of the Cigarette and Tobacco Products Surtax Fund created by Section 30122 of the Revenue and Taxation Code.

(f) Based on the results of programs supported by this chapter and any other proven methodologies available to the committee, produce a comprehensive master plan for implementing tobacco education programs throughout this state for the prevention and cessation of tobacco use. The master plan shall include implementation strategies for each target population specified in Section 24161.5 for programs throughout this state. The master plan shall be submitted to the Legislature on or before January 1, 1991, and shall be updated every two years thereafter until a progress report is completed on January 15, 2000. The master plan and its revisions shall include recommendations on administrative arrangements, funding priorities, integration and coordination of approaches by the State Department of Health Services and the State Department of Education and their support systems, as well as progress reports relating to each target population. The master plan shall establish a goal of achieving a 75 percent reduction in tobacco consumption in California by the year 1999.

24164. To prevent tobacco-related diseases and diminish tobacco use, the State Department of Health Services shall do all of the following:

(a) Contract for an initial baseline survey and followup surveys of attitudes and behavior regarding tobacco use and a description of information received by the public regarding smoking and tobacco use. The department shall issue a request for proposals for the 1989–90 baseline study, evaluate proposals and select a contractor or

contractors within 90 days of the effective date of this act.

(b) The department shall produce or contract for a description of programs recognized as effective in reducing smoking and tobacco use, and the identification of portions of target populations which need information regarding the hazards of tobacco use.

(c) Establish within the state department a program on tobacco use and health to promote the study of effective tobacco use interventions and behavior programs in community and other nonschool settings. By September 1, 1990, the state department shall develop a mechanism to implement a systematic and independent evaluation of the local and state programs established under this chapter. The purpose of the evaluation is to direct the most efficient allocation of resources appropriated under this chapter to accomplish the maximum prevention and reduction of tobacco use. This comprehensive evaluation shall be designed to measure the extent to which programs funded under this chapter promote the goals identified in this chapter and in Proposition 99 of the November 1988 general election. The evaluation design shall do all of the following:

(1) Be based on sound evaluation principles and include, to the extent feasible, elements of controlled experimental methods.

(2) Monitor the overall statewide effect of health education efforts on smoking and tobacco use, and, to the extent feasible, the resulting effects on health.

(3) Monitor the effect of the programs on individual target populations identified by this chapter or designated by the state department as meriting special attention.

(4) Provide an evaluation of the comparative effectiveness of individual program designs which shall be used in funding decisions and program modifications.

(5) Incorporate other aspects into the evaluation which have been identified by the state department in consultation with state and local advisory groups, local lead agencies, and other interested parties.

(d) The state department shall provide a report to the Legislature on January 1, 1992, and each succeeding year on the progress of the evaluation.

(e) The state department and local lead agencies shall use the evaluation in the administration and allocation of funds awarded pursuant to this chapter in order to maximize the effectiveness of this program.

(f) Assist the State Department of Education in identifying and developing instructional materials and curricula in school-based programs, designed to enhance the prevention of and encouraging the cessation of the continuing use of, tobacco products. The materials and curricula shall address the specific needs of persons in kindergarten and grades 1 to 12, inclusive, and in adult education programs.

(g) Contract with one or more qualified agencies for production

and implementation of an ongoing public awareness of tobacco-related diseases by developing an information campaign using a variety of media approaches. The department shall issue a request for proposals for the 1989–90 media campaign, evaluate proposals submitted, and select a contractor or contractors within 120 days of the effective date of this section. Any media campaign funded with this part shall stress the importance of both preventing the initiation of tobacco use and quitting smoking and shall be based on professional market research and surveys necessary to determine the most effective method of diminishing tobacco use among specified target populations. Initial media efforts shall be directed to specific target populations. The contractors selected shall be provided with all available survey information resulting from ongoing programs funded under this chapter. Priority shall be given to minor children, ages 6 to 14, inclusive. The medium used shall be determined to be the most effective at reaching this targeted age group. With respect to the broadcast media, the message shall be aired at times expected to reach the priority age group. With respect to the print media, publications to be used shall be those which appeal to the priority age group.

(h) Provide training, consultation, support, and continuing education to health professionals, and others interested in developing programs and services directed at preventing tobacco use and promoting smoking cesstion, utilizing, when available and determined by the state department, the expertise of universities in this state and schools of public health. The training, consultation, support, and continuing education shall include advice and support in creating a smoke-free environment.

(i) Conduct an awards program to acknowledge the outstanding achievements of those communities, organizations, and groups that have fostered movement toward a smoke-free society or have reduced the consumption of tobacco.

(j) The department shall issue guidelines for local plans for education against tobacco use. The guidelines shall require local public health departments to provide services directed at preventing tobacco use and promoting smoking cessation to the target populations enumerated in Section 24161.5 and to persons under 19 years of age who no longer attend school and to youth attending school who are not served through State Department of Education funded programs. The guidelines shall require for each target population to be served a description of the services to be provided, an estimate of the number to be served, an estimate of the success rate, and a method to determine to what extent goals have been achieved. Beginning with 1990–91 fiscal year, guidelines shall require local lead agencies to describe how local funding decisions will take into account evaluations of program effectiveness and efficiency. The guidelines shall require the submission of a budget and information on staffing configurations.

(k) Within 90 days of the effective date of this chapter, the

department shall issue guidelines for fiscal year 1989–90 and within nine months of the effective date of this chapter, the department shall issue guidelines to local lead agencies on how to prepare a local plan for a comprehensive community intervention program against tobacco use.

(*l*) Provide technical assistance to local lead agencies for the development of plans required by Section 24165.5 so that the local lead agencies are able to comply with the schedule for the submission of plans specified in Section 24165.5. The technical assistance shall include, but not be limited to, the following:

(1) Developing and disseminating preventive health education program options for local communities.

(2) Providing training, consultation, and technical assistance to local health departments, local advisory committees, and service providers.

(m) Receive and approve local plans submitted by local lead agencies and provide technical assistance and guidance as necessary to ensure the compliance of the local lead agencies with this chapter. Every effort shall be made to approve or provide a list of necessary amendments to a local plan within 30 days of receipt of the local plan. The state department may authorize a local lead agency to begin implementation of its local plan on a provisional basis, with final approval of the local plan contingent on satisfying conditions specified by the state department

(n) Work in collaboration with the public and private sectors in implementing the activities required of the state department and provide access upon request to local plans, program statistics, and other readily available information.

(o) Provide staff, assistance, and support needed by the committee.

(p) In consultation with the committee, develop a comprehensive master plan for implementing tobacco education programs throughout the state for the prevention and cessation of tobacco use.

(q) Consult regularly with the University of California regarding trends in the frequency and the cost of treating tobacco-related diseases and the success of research efforts to reduce tobacco use and limit its adverse health effects.

(r) Establish, in consultation with the State Department of Education and county offices of education, a data collection and data management program to study effective tobacco use interventions. Under this program the department may contract for studies and evaluations in school-based and community-based programs. The department shall consult with the State Department of Education regarding the collection and evaluation of program data.

(*l*) The department shall require, by contract, that local lead agencies use a uniform management data and information system which will permit comparisons of workload, unit costs, and outcome measurements on a statewide basis. The depatment shall specify data reporting requirements for local lead agencies and their

subcontractors.

(2) The department shall approve local lead agency and grantee computer software and hardware in order to ensure systemwide compatibility and capacity to expand. Departmental guidelines for local plans shall require local lead agencies to set forth their hardware and software plans and needs.

(3) The department may contract for the development or operaion of a computerized management information system.

(4) The department shall consult the State Department of Education regarding computer software and hardware systems for school-based programs.

(s) Develop in consultation with the California Conference of Local Health Officers, a formula for the allocation of funds to local lead agencies for anti-tobacco programs. The formula shall take into consideration the estimated number of persons in each target population to be served and likely variations in the costs of serving different target groups.

24165. (a) The State Department of Health Services shall award and administer grants for projects directed at the prevention of tobacco-related diseases. The purpose of the grant program is to conduct health education and promotion activities targeted to high-risk persons and groups in order to reduce the number of persons beginning to use tobacco, continuing to use tobacco, or developing tobacco-related diseases. The grants shall provide funds to eligible grantees, as determined by the state department. In awarding grants, the state department shall select a variety of projects and grantees.

(b) The state department shall develop criteria and standards for the allocation of grant awards which consider the need to balance target populations to be served, project types of rural suburban and urban projects, and consider the current regional availability of similar services. Target populations may include, but not be limited to, children, young adults, pregnant women, low-income individuals, Black, Hispanic, Native American, and Asian-Pacific Islander populations, current smokers, and school-aged youth no longer attending school classes. The grant awards may also be made to school districts for nonclassroom, districtwide efforts to reduce tobacco use. The department shall develop mechanisms to evaluate all programs and shall require any program funded under this chapter to provide statistics on the impact of the program.

(c) The state department shall give priority to grantees who do the following:

(1) Demonstrate community support for the project.

(2) Design the project to coordinate with other community services including local health programs, school-based programs, or voluntary health organizations.

(3) Design the project to utilize and enhance existing services and resources.

(4) Serve a target population at high risk of starting tobacco use

or developing tobacco-related illnesses.

(5) Demonstrate an understanding of the role community norms have in influencing behavioral change regarding tobacco use.

(6) Indicate promising innovative approaches to diminishing tobacco use among target groups and permit those approaches to be replicated by others.

24165.3. The State Department of Health Services shall expand the Child Health Disability Prevention (CHDP) Program contained in Article 3.4 (commencing with Section 320) of Chapter 2 of Division 1 as follows:

(a) Any child between birth and 90 days, and all persons under 21 years of age who are eligible for the California Medical Assistance Program and all persons under 19 years of age whose family income is not more than 200 percent of the federal poverty level shall be eligible for services under the program in the county of which they are a resident. The department shall adopt rules and regulations specifying which age groups shall be given certain types of screening tests and recommendations for referral.

(b) The first source of referral under the program shall be the child's usual source of health care. If referral is required and no regular source of health care can be identified, the facility or provider providing health screening and evaluation services shall provide a list of three qualified sources of care, without prejudice for or against any specific source.

(c) The department shall issue protocols for an antitobacco education component of the CHDP medical examination. The protocols shall include the following: dissuading children from beginning to smoke, encouraging smoking cessation, and providing information on the health effects of tobacco use on the user, children, and nonsmokers. The protocols shall also include a focus on health promotion, disease prevention, and risk reduction, utilizing a "wellness" perspective that encourages self-esteem and positive decisionmaking techniques, and referral to an appropriate community smoking cessation program.

24165.5. (a) (1) Except as provided in paragraph (2), each county health department or city health department as provided in Section 16700 of the Welfare and Institutions Code shall be the lead local agency for its county. The local lead agency shall have the overall responsibility for the success of the programs funded pursuant to this chapter in its county.

(2) Counties contracting with the State Department of Health Services for the provision of health care services pursuant to Section 16709 of the Welfare and Institutions Code may elect to enter into an arrangement with the state department for the administration and provision of funds and services subject to this chapter in their counties. In those cases, the state department shall act as the local lead agency for that county.

(b) The local lead agency shall do all of the following:

(1) Provide, or contract for, preventive health education against

tobacco services to targeted populations.

(2) Establish a coordinated information, referral, outreach, and intake system for preventive health education against tobacco services for targeted populations.

(3) Administer funds in accordance with this chapter, and department guidelines and regulations.

(4) Submit local plans to implement programs for the prevention and reduction of tobacco use and implement the local plans in accordance with the following schedule:

(A) Within three months of the receipt of guidelines issued pursuant to subdivision (h) of Section 24164 relating to education against tobacco use, develop and submit a plan in accordance with those guidelines.

(B) By January 1, 1991, submit a plan in compliance with the guidelines issued pursuant to subdivision (j) of Section 24164 relating to education against tobacco use targeted at the entire community.

(C) Within 10 days of receiving approval from the state department for a local plan, the local lead agency shall begin to implement that local plan as approved by the state department. In implementing the local plan, the local lead agency may enter into agreements with agencies or organiztions which satisfy the requirements of this chapter for the receipt of funds.

(5) Establish a uniform data collection system in compliance with standards and guidelines issued by the state department, and submit audit and fiscal reports as required by the state department.

(6) Coordinate services authorized by this chapter within and between county service providers.

(7) Provide technical assistance to service providers.

(8) Review, and suggest improvements to proposed county school district antitobacco plans. Prepare a letter for the county officer of education setting forth conclusions of the review. Work closely with the county office of education to ensure effective coordination of local school and nonschool antitobacco efforts.

(9) Coordinate activities with other governmental agencies.

(c) The local plans described in paragraph (4) of subdivision (b) shall include all of the following:

(1) A description of the targeted population, including age, race, ethnicity, language, education, income levels, its status as urban or rural, transportation needs, and any other information which the lead local agency determines is relevant.

(2) Local data on smoking and tobacco use among the targeted population.

(3) Goals for how many persons of the targeted population will be reached by health education, how many will participate in a smoking prevention or cessation program, and how many will quit or not start smoking as a result.

(4) A description of the direct services to be provided under the plan, including the services to be provided to the targeted populations enumerated in Section 24161.5 and school-age youth who

do not receive services through public school programs.

(5) Cost estimates for programs identified in the plan.

24166. Local health departments shall obtain the involvement and participation of local community organizations with special experience and expertise in community health education against tobacco usage, including representatives of high-risk populations. Local agencies shall include in their plan submitted pursuant to Section 24165.5 a description of how they shall fulfill this requirement. Representatives of these local groups shall assist and advise the local lead agency in all aspects of the local plan implemented pursuant to this chapter.

24166.1. The following goals and priorities shall govern funding services provided under this chapter pursuant to local plans:

(a) The provisions of preventive health education against tobacco use aimed at targeted populations, including pregnant women, mothers of young children, and minorities, school dropouts, and other school-aged youth who would otherwise be unserved.

(b) The provisions of preventive health education against tobacco use aimed at school-age youth and their families in the community.

(c) The provision of preventive health education against tobacco use aimed at the workplace and the community.

24166.5. (a) Local lead agencies shall attempt to ensure that preventive education against tobacco use for targeted populations is provided in a way that reaches all geographic areas of the county.

(b) In choosing among eligible service providers available to serve the targeted populations described in subdivision (a), the local lead agency shall give priority to programs presently providing preventive health education, case management services to the targeted populations which are compatible with preventive health education against tobacco use, or other services in which preventive health education against tobacco use can be incorporated in a logical and efficient manner.

24167. The State Department of Education shall provide the leadership for the successful implementation of this chapter in programs administered by local public and private schools, school districts, and county offices of education. The State Department of Education shall do all of the following:

(a) Create a planning and technical assistance program to carry out its responsibilities under this chapter.

(b) Prepare guidelines for schools, school districts, and school district consortia to follow in the preparation of plans for implementation of antitobacco use programs for school-age populations. The guidelines shall:

(1) Require the applicant agency to select one or more model program designs and shall permit the applicant to modify the model program designs to take special local needs and conditions into account.

(2) Require the applicant agency to prepare for each target population to be served a description of the service to be provided,

an estimate of the number to be served, an estimate of the success rate and a method to determine to what extent goals have been achieved.

(3) Require plan submissions to include a staffing configuration and a budget setting forth use and distribution of funds in a clear and detailed manner.

(4) Require plan submissions to include a letter prepared by the local lead agency containing comments and recommendations on the plan.

(c) Prepare model program designs and information for local schools, local school districts, consortia, and county offices of education to follow in establishing direct service programs to targeted populations. Model program designs shall, to the extent feasible, be based on studies and evaluations that determine which service delivery systems are effective in reducing tobacco use and are cost-effective. The State Department of Education shall consult with the State Department of Health Services, school districts with existing antitobacco programs, and the University of California in the preparation of model program designs and information.

(d) Provide technical assistance for local schools, local school districts, and county offices of education regarding the prevention and cessation of tobacco use. In fulfilling its technical assistance responsibilities, the State Department of Education may establish a center for tobacco use prevention which shall identify, maintain, and develop instructional materials and curricula encouraging the prevention or cessation of tobacco use. The State Department of Education shall consult with the State Department of Health Services, the University of California, and others with expertise in antitobacco materials or curricula in the preparation of these materials and curricula.

(e) Monitor the implementation of programs which it has approved under this chapter to ensure successful implementation.

(f) Prepare guidelines within 180 days of the effective date of this chapter for a school-based program of outreach, education, intervention, counseling, peer counseling, and other activities to reduce and prevent smoking among school-age youth.

(g) Assist county offices of education to employ a tobacco use prevention coordinator to assist local schools and local public and community agencies in preventing tobacco use by pupils.

(h) Train the tobacco use prevention coordinators of county offices of education so that they are:

(1) Familiar with relevant research regarding the effectiveness of various kinds of antitobacco use programs.

(2) Familiar with department guidelines and requirements for submission, review, and approval of school-based plans.

(3) Able to provide effective technical assistance to schools and school districts.

(i) Establish a tobacco use prevention innovation program effort directed at specific pupil populations.

(j) Establish a competitive grants program to develop innovative programs promoting the avoidance, abatement, and cessation of tobacco use among pupils.

(k) Establish a tobacco-free school recognition awards program.

(*l*) In consultation with the State Department of Health Services, develop a mechanism for the evaluation of programs which receive funds under this chapter and develop the master plan for submission to the Legislature through the Tobacco Education Oversight Committee.

(m) As a condition for receiving funds pursuant to this chapter, the State Department of Education, county offices of education, and local school districts shall ensure that they coordinate their efforts toward smoking prevention and cessation with the lead local agency in the community where the local school district is located.

(n) Develop, in coordination with the county offices of education, a formula which allocates funds for school-based, antitobacco education programs to school districts and county offices of education on the basis of the average daily attendance (ADA) of pupils.

(o) (1) Allocate funds for administration to county offices of education for implementation of Tobacco Use Prevention Programs. The funds shall be allocated according to the following schedule based on average daily attendance in the prior year credited to all elementary, high, and unified school districts, and to all county superintendents of schools within the county as certified by the Superintendent of Public Instruction:

(A) For counties with over 400,000 average daily attendance, thirty cents ($0.30) per average daily attendance.

(B) For counties with more than 100,000 and less then 400,000 average daily attendance, sixty-five cents ($0.65) per average daily attendance.

(C) For counties with more than 50,000 and less than 100,000 average daily attendance, ninety cents ($0.90) per average daily attendance.

(D) For counties with more than 25,000 and less than 50,000 average daily attendance, one dollar ($1) per average daily attendance.

(E) For counties with less than 25,000 average daily attendance, twenty-five thousand dollars ($25,000).

(2) In the event that funds appropriated for this purpose are insufficient, the Superintendent of Public Instruction shall prorate available funds among participating county offices of education.

24168. (a) The State Department of Education shall award and administer grants for projects directed at the prevention of tobacco use among school-age children. The purpose of the grant program is to conduct health education and tobacco information activities targeted to school-age children in order to reduce the number of persons beginning to use, or continuing to use, tobacco. The grants shall provide funds to eligible grantees, as determined by the State

Department of Education. The State Department of Education shall select a variety of grantees and innovative and promising projects.

(b) The State Department of Education shall develop criteria and standards for the allocation of grant awards, which consider the need to balance (1) target populations to be served; (2) project type; (3) rural, suburban, and urban projects, and consider the local availability of similar services. The department shall evaluate all grant programs by employing statistics that describe the impact of a grant program.

(c) The State Department of Education shall give priority to grantees who do the following:

(1) Design the project to coordinate with other community services including local health agencies, voluntary health organizations, and parent organizations.

(2) Design the project to utilize and develop existing services and resources.

(3) Demonstrate an understanding of the role that society, the environment, and community norms have in influencing tobacco usage.

(4) Indicate promising innovative approaches to diminishing tobacco use among school-age children and permit those approaches to be replicated by others.

24168.1. County offices of education shall do all of the following:

(a) Provide technical assistance and training to school districts and consortia of school districts regarding planning and preparation of antitobacco programs plans pursuant to State Department of Education guidelines.

(b) Receive and approve plans submitted by school districts and provide technical assistance and guidance as necessary to ensure the compliance of school districts with this chapter. Every effort shall be made to approve or provide a list of necessary amendments to a school district plan within 30 days of receipt. The county office of education may authorize a school district to begin implementation of its plan on a provisional basis, with final approval of the local plan contingent on satisfying specified conditions.

(c) Certify to the State Department of Education that a school district has met the conditions specified in the department's guidelines and that funds reserved for the school district's antitobacco programs may be released.

(d) Provide for appropriate coordination between school districts programs and local antitobacco use programs funded by the local lead agency.

24169. The State Department of Education shall make periodic reports to the committee regarding the status and funding of tobacco education programs funded under this chapter as required by the committee. The reports shall include an overview of program and grant expenditures funded under this chapter.

24169.6. There is hereby created under the authority of the Controller the Tobacco Education Fund.

24169.7. This chapter shall remain operative only until July 1, 1991, and 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. Section 14148.5 of the Welfare and Institutions Code is repealed.

SEC. 6. Section 14148.5 is added to the Welfare and Institutions Code, to read:

14148.5. (a) State funded perinatal services shall be provided under the Medi-Cal program to pregnant women and state funded medical services to infants up to one year of age in families with incomes above 185 percent, but not more than 200 percent of the federal poverty level, in the same manner that these services are being provided to the Medi-Cal population, including eligibility requirements and integration of eligibiity determinations and payment of claims.

(b) Services provided under this section shall not be subject to any share-of-cost requirements.

(c) The department shall provide for outreach activities in order to enhance participation and access to perinatal services of persons eligible under subdivisions (a) and (b). Funding for these outreach activities shall be made available from the funds appropriated for purposes of this section.

(d) The department may utilize funding made available from funds appropriated for this section to allow counties to outstation eligibility workers to expedite the eligibiilty determination for coverage under subdivisions (a) and (b).

(e) This section shall remain operative only until July 1, 1991, and shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted stataute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 7. Section 14148.6 is added to the Welfare and Institutions Code, to read:

14148.6. (a) The department shall, to the extent permitted by federal law, integrate the following into a single maternity program:

(1) The comprehensive perinatal services program required by Section 14134.5.

(2) The Community-Based Perinatal System provided pursuant to Article 2.4 (commencing with Section 283) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(b) It is the intent of the Legislature that any federal funds received pursuant to Title 5 of the federal Social Security Act, Subchapter 5 (commencing with Section 701) of Chapter 7 of Title 42 of the United States Code, or state General Fund moneys which are currently used for perinatal services for women between 185 and 200 percent of the federal poverty level, and which will no longer be needed for these services, shall be redirected to other high priority maternal and child health programs.

(c) This section shall remain operative only until July 1, 1991, and

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. 8. Section 16709 of the Welfare and Institutions Code 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 pay for services for persons requiring emergency treatment, regardless of their county of residence, including those persons whose immigration status has not been established, who are unable to pay for those services, and for whom payment will not be made through any private coverage or by any other program funded in whole or in part by the state or the federal government.

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) The department may pursue third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3.

(n) 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.

(o) This section shall remain in effect only until July 1, 1991, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1991, deletes or extends that date.

SEC. 8.5. Section 16709 is added to the Welfare and Institutions Code, 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.

(n) This section shall become operative July 1, 1991.

SEC. 8.7. Section 16709.5 is added to the Welfare and Institutions Code, to read:

16709.5. (a) Funds appropriated for the purposes of this chapter shall be allocated on a monthly basis.

(b) Money allocated for the purposes of this chapter shall be used to expand the scope of benefits under the County Medical Service Program and to compensate hospitals and other emergency health service providers for emergency treatment of out-of-county indigent patients and shall not be used to fund existing levels of service.

(c) This section shall remain operative only until July 1, 1991, and 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. Part 4.7 (commencing with Section 16900) is added to Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 1. GENERAL

16900. Unless the context otherwise requires, the definitions set forth in this chapter shall govern the construction of this part.

16901. "CMSP county" means a county which contracts with the department for the administration of health services pursuant to Section 16709.

16902. "Department" means the State Department of Health Services.

16903. "Fund" means the Cigarette and Tobacco Products Surtax Fund.

16904. "Hospital services" means services provided by public and private hospitals licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

16905. "MISP county" means a county which administers, either directly or through contracts with selected providers, its own county health services program pursuant to Section 16703.

16906. "Office" means the Office of Statewide Health Planning and Development.

16907. "Other provider services" means health care services specified in Sections 14021 and 14132 provided to patients who are unable to pay for their treatment and for whom payment will not be made in whole or in part through private coverage or by any program funded by the federal government.

16908. "Physician services" means services provided by a licensed physician.

CHAPTER 2. COUNTY HEALTH SERVICES REPORTING

16910. (a) (1) Funds appropriated for the purposes of this chapter shall be used for the development and implementation of county medically indigent care reporting systems which will provide data on all persons and provided pursuant to Section 17000.

(2) Funds appropriated for the purposes of this chapter shall be used for implementation of this section for the 1989–90 and 1990–91 fiscal years.

(b) Use of these moneys shall be limited to one-time costs for

equipment purchases, system design and development, and necessary system testing and implementation costs.

(c) (1) Counties shall submit an application based upon the format required by the department which shall require, at a minimum, detail design specifications, itemized equipment needs, development timeline, and estimated costs.

(2) A county shall receive funding for the project upon the department's review and approval of its application, and shall have two years in which to expend these funds.

(d) Counties shall complete implementation of the medically indigent care reporting system by July 1, 1991.

CHAPTER 2.5. COUNTY REPORTING REQUIREMENTS

16915. (a) Any county receiving an allocation pursuant to this part shall, at a minimum, report to the department indigent health care program demographic, expenditure, and utilization data, in a manner that will provide an unduplicated count of users, as follows:

(1) The following patient demographic data:

(A) Age.

(B) Sex.

(C) Ethnicity.

(D) Family size.

(E) Monthly income.

(F) Source of income, according to the following categories:

(i) Disability income.

(ii) Employment.

(iii) Retirement.

(iv) General assistance.

(v) Other.

(G) Type of employment, according to the following categories:

(i) Agriculture.

(ii) Labor and production.

(iii) Professional and technical.

(iv) Service.

(v) Nonemployed.

(H) Payor source, according to the following categories:

(i) Private insurance.

(ii) Medi-Cal.

(iii) Medicare.

(iv) County program.

(v) Self-pay.

(vi) Other.

(I) ZIP code of residence.

(J) Status as a newly legalized person, including section number and dates of status.

(2) Indigent health care expenditure data, including all of the following:

(A) Inpatient hospital services, according to the following

categories:

(i) County hospital.

(ii) Contract hospital.

(iii) University teaching hospital.

(iv) Other, noncontract hospital.

(v) Diagnostic category, as defined by ICD 9.

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient.

(ii) Free standing community clinic.

(iii) Primary care physician.

(iv) Nonemergency services rendered in an emergency room environment.

(v) Type of service.

(C) Emergency room services, according to the following categories:

(i) Emergency services.

(ii) Emergency services which result in a hospital admission.

(iii) Emergency services, which are rendered in a noncounty, noncontract hospital and result in a transfer of the patient to a county or contract hospital.

(3) Health care utilization data.

(A) Inpatient hospital services, according to the following categories:

(i) County hospital days and discharges.

(ii) Contract hospital days and discharges.

(iii) University teaching hospital days and discharges.

(iv) Other, noncontract hospital days and discharges.

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient visits.

(ii) Free standing community clinic visits.

(iii) Primary care physician visits.

(iv) Visits to a hospital emergency room for nonemergency services.

(C) Emergency room services, according to the following categories:

(i) Visits for emergency services in a county hospital.

(ii) Visits for emergency services in a contract hospital.

(iii) Visits for emergency services in a noncounty, noncontract hospital.

(iv) Visits for emergency services which result in an admission in a county hospital.

(v) Visits for emergency services which result in an admission to a contract hospital.

(vi) Visits for emergency services which result in an admission to a noncounty, noncontract hospital.

(D) Visits for emergency services which are rendered in a noncounty, noncontract hospital and result in a transfer of the patient to a county or contract hospital.

(4) Geographic location of rendered services.

(A) Inpatient hospital services, according to the following categories:

(i) County hospital.

(ii) Contract hospital.

(iii) University teaching hospital.

(iv) Other, noncontract hospital.

(B) Outpatient services, according to the following categories:

(i) Hospital outpatient.

(ii) Free standing community clinic.

(iii) Primary care physician.

(iv) Nonemergency services rendered in an emergency room environment.

(C) Emergency room services.

(5) Expenditure and utilization data for persons with acquired immune deficiency syndrome (AIDS) and AIDS-related complex.

(A) Total number of patients.

(B) Number of inpatient users.

(C) Number of discharges.

(D) Total inpatient days.

(E) Total inpatient expenditures.

(F) Number of outpatient users.

(G) Number of outpatient visits.

(H) Total outpatient expenditures.

(I) Number of emergency room users.

(J) Number of emergency room visits.

(K) Total emergency room expenditures.

(b) Counties shall report demographic, cost and utilization data on indigent health care to the department as follows:

(1) An estimated quarterly report no later than 90 days after the last day of the quarter to be reported.

(2) An actual quarterly report no later than 180 days after the last day of the quarter to be reported.

(3) An estimated annual report no later than 90 days after the last day of the year to be reported.

(4) An actual annual report no later than 180 days after the last day of the year to be reported.

(5) Reports shall be submitted on machine readable media, on 5¼ inch or 3½ inch diskette, in the format specified by the department.

16916. The department shall disallow all costs related to the countywide cost allocation plan from expenditure reports submitted pursuant to Section 16706 in any fiscal year in which a county fails to provide the reports and data required by this chapter according to the schedule specified in subdivisions (a) and (b) of Section 16709.

16917. (a) Based on data submitted by the counties and other data available to the department, the department shall, by January 1 of each year, prepare a report on the demographics of the medically indigent population, and the cost and utilization of health care services delivered to medically indigent persons as provided directly or indirectly by counties. The report shall be written to

provide useful information for the hospital administrators, county administrators, boards of supervisors, and the health policy and fiscal committees of the Legislature. The report shall include, but not be limited to, all of the following:

(1) The demography of the medically indigent population.

(2) Utilization rates of services for:

(A) Inpatient services including the total number of patient days, total discharges, and the average length of stay for the following:

(i) Persons with AIDS or AIDS-related complex.

(ii) Persons for whom there is not a source of payment and who are unable to pay for care received.

(iii) Persons admitted from the emergency room.

(iv) Persons below 150 percent of the federal poverty level.

(v) Perinatal services including deliveries.

(B) Outpatient services including the total number of outpatient visits, and by the following:

(i) Persons with AIDS and Aids-Related Complex.

(ii) Persons for whom there is no source of payment, and who are unable to pay for care received.

(iii) Persons below 150 percent of the federal poverty level.

(iv) Prenatal services.

(C) Emergency room services including the total number of emergency room visits, and any visits which meet the following criteria:

(i) Resulting in a hospital admission.

(ii) Which did not result in a hospital admission.

(iii) For persons with AIDS and Aids-Related Complex.

(iv) For persons for whom there is no source of payment and who are unable to pay for care received.

(3) Cost of services provided for all of the following:

(A) Inpatient services including the total cost of inpatient services, average cost per patient day, and average length of stay for the following:

(i) Persons with AIDS and AIDS-Related Complex.

(ii) Persons for whom there is not a source of payment and who are unable to pay for care received.

(iii) Persons below 150 percent of the federal poverty level.

(iv) Persons admitted from the emergency room.

(v) Perinatal services including deliveries.

(B) Outpatient services including the total costs for outpatient visits, and the average cost per outpatient visit for the following:

(i) Persons with AIDS and AIDS-Related Complex.

(ii) Persons for whom there is no source of payment and who are unable to pay for care received.

(iii) Persons under 150 percent of the federal poverty level.

(iv) Prenatal services.

(C) Emergency room services including the total and average costs for the following:

(i) Emergency room visits resulting in a hospital admission.

(ii) Emergency room visits which did not result in a hospital admission.

(iii) Emergency room visits for persons with AIDS and AIDS-Related Complex.

(iv) Emergency room visits for persons for whom there is no source of payment and who are unable to pay for care received.

(4) The distribution of funds expended on health care for the medically indigent for the following:

(A) Inpatient services and for the most frequently required services, including the average length of stay and average cost per patient day.

(B) Outpatient services and for the most frequently used services.

(C) Per capita net county contribution, and the per capita county contribution as a percent of per capita county income.

(5) County revenue for health care services, by category, for the most recent five years.

(A) State assistance under the following:

(i) AB 8 inpatient and outpatient, under Part 4.5 (commencing with Section 16700).

(ii) Medi-Cal.

(iii) Medically Indigent Services Program.

(iv) California Healthcare for Indigents Program.

(v) County Medical Services Program.

(vi) Other state assistance.

(B) Federal assistance under the following:

(i) Medicare.

(ii) Federal State Legalization Impact Assistance Grants.

(iii) Other federal assistance.

(C) County assistance under the following:

(i) Enterprise funds.

(ii) County contributions.

(b) The format of the report shall include tables and figures with narrative interpretation and analysis of the data presented. The data shall be presented in a manner which provides for meaningful comparisons between counties and facilities, and displays changes in individual county and facility data from period to period.

(c) The department shall, in addition to the annual report, be responsible for the preparation of special indepth reports which evaluate the efficiency, effectiveness, and adequacy of the county health delivery system. In this capacity the department shall, from time to time issue special indepth reports which provide information for health policy makers about county health system problems and trends. At least annually the department shall consult with the Legislature, counties, and other interested groups about the subject matter for future special reports.

CHAPTER 3. UNCOMPENSATED CARE ASSISTANCE

16920. (a) It is the intention of the Legislature to appropriate a portion of the 1988–89 fiscal year one-time revenues from the Hospital Services Account for distribution to each county and noncounty hospital which provides uncompensated care to unsponsored patients, with payments based upon the proportion of each hospital's share of the 1988 calendar year statewide total of uncompensated care rendered to unsponsored patients.

(b) It is the intention of the Legislature to partially and proportionately compensate each hospital which provides care to unsponsored patients and to provide an economic incentive for all hospitals to provide, maintain, and enhance access to care.

(c) for purposes of this section, "uncompensated care charges" means the sum of the charges related to patients falling within charity care and 50 percent of bad debts, as reported quarterly to the office pursuant to Section 443.32 of the Health and Safety Code. The office shall use the data as published by the office for each quarter of 1988.

(d) As used in this section, "uncompensated care costs" means that amount calculated by applying an overall hospital cost-to-charge ratio, calculated by dividing gross operating expenses by gross inpatient and outpatient revenue, as reported quarterly to the office, to uncompensated charges.

16921. Funds appropriated for the purposes of this chapter shall be allocated and disbursed to county and noncounty hospitals which meet any of the following requirements:

(a) Operate an emergency room pursuant to Section 1317 of the Health and Safety Code.

(b) Adhere to the emergency care requirements of subdivision (e) of Section 1317 of the Health and Safety Code.

(c) Treat county indigent patients.

(d) Are childrens' hospitals for purposes of this part.

(e) Are small and rural hospitals as defined in Section 1188.855 of the Health and Safety Code.

16922. (a) In order to determine the allocation for each eligible hospital of the amount appropriated for the purposes of this chapter, the office shall do all of the following:

(1) Compute the total uncompensated care costs for each eligible hospital.

(2) Compute the total uncompensated care costs for all eligible hospitals.

(3) Divide each hospital's uncompensated care costs as computed in paragraph (1) by the total uncompensted care costs as computed in paragraph (2).

(b) The result shall be multiplied by the total funds specified for hospital payments pursuant to Section 16921 to determine each hospital's payment for uncompensated care. That amount shall be allocated in one lump sum to each hospital by the Controller

pursuant to subdivision (a).

16923. The office shall do all of the following:

(a) Review and process the quarterly financial and utilization data report and calculate the distribution to be made within 30 days after the effective date of this chapter.

(b) Make the calculations available to the Controller within 40 days after the effective date of this article.

(c) Incorporate the quarterly financial and utilization data reports into the field audit function currently utilized by the office.

(d) Develop procedures to recover funds determined to have been spent in a manner inconsistent with this section and Article 2 (commencing with Section 30121) of Chapter 2 or Part 13 of Division 2 of the Revenue and Taxation Code.

16924. The Controller shall distribute to hospitals the funds appropriated for the purposes of this chapter within 60 days from the effective date of this chapter provided that the office has certified that the hospital is in compliance with this section.

CHAPTER 4. RURAL HEALTH SERVICES

16930. Funds appropriated for the purpose of this section shall be used to enhance and maintain rural health services provided by counties, hospitals, physicians, and other service providers to eligible persons who are unable to pay for their care and for whom services not covered in whole and in part by any public or private payor.

(a) The department shall allocate to each eligible county moneys derived from the Hospital Services Account as follows:

(1) The combined total of hospital uncompensated care costs for all county and noncounty hospitals in each CMSP county shall be derived from data calculated pursuant to Section 16920.

(2) Each county's share shall be based upon that county's total hospital uncompensated care costs divided by the total hospital uncompensated care costs of all CMSP counties. The product shall be multiplied by the amount appropriated from the Hospital Services Account for purposes of this chapter The result shall be that county's allocation of the total amount available.

(3) The amount determined in paragraph (2) for each county shall be divided and distributed to county and noncounty hospitals within each CMSP county according to the methodology and requirements of Section 16946.

(b) The department shall distribute those moneys derived from the Physician Services Account and the Unallocated Account to CMSP counties based upon the percentages obtained as a result of dividing each individual CMSP county's population by the total population of all CMSP counties as reported in the most recent annual Department of Finance Research Unit Report E-1.

(1) Counties shall use moneys from the Unallocated Account to expand emergency medical transportation or public health services or to enhance other rural health care services.

(2) Counties shall distribute moneys from the Physician Services Account to reimburse or support physicians for medically necessary emergency, obstetric, and pediatric services provided by groups of, or individual, physicians, to the extent that they are not reimbursed by any other public or private party.

(d) As a condition of receiving funds under this section, a county shall provide. or arrange and pay for, medically necessary followup treatment, including prescription drugs for any condition detected as part of a child health and disability prevention screen and for any child eligible for services under Section 323.7 of the Health and Safety Code, upon referral by a child health and disability prevention program provider. This section shall not apply to any child eligible to receive care with no share of cost under the Medi-Cal program or who is covered by another publicly funded program or for whom such services are covered or will be paid by any other responsible party. A county may require that hospitals, physicians, and other providers receiving funds appropriated pursuant to this part participate in complying with this subdivision.

(e) For fiscal year 1989–90, each county intending to contract with the department pursuant to this section for the administration of Physician Account moneys shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than November 15, 1989 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. As a condition of contracting with the department, the county shall comply with departmental requests for uniform program standards, including, but not limited to, eligibility levels, payment of claims, and deposit or transfer of funds administered.

(f) (1) Each county requesting funds pursuant to this section shall submit for approval an application for initial funding and a description of the proposed use and expenditure of the moneys, as a component of their county health services plan and budget submitted under Section 16700.

(2) The department shall review each county's application and proposed use of funds for compliance with the provisions of this section.

(g) The department shall make initial monthly payments upon approval of the county's request for funds containing assurances that the county will comply with this section and other applicable provisions of this part. Payments beyond February 1 of each fiscal year shall be contingent upon the signing of an agreement between the board of supervisors and the department.

(h) Each county shall submit a report of estimated and actual expenditures of moneys as part of the submissions required according to the procedures established by the department under Section 16706.

(i) The department shall review these reports and recoup unspent moneys, or any expenditures disallowed or not in compliance under this section or Section 16706.

(j) The department shall withhold, in part or in whole, payment of rural health services funds to a CMSP county, until the reports specified in this subdivision have been submitted to the department in the form and according to the timelines established by the department.

(k) As a condition of receiving allocations pursuant to this section, each county shall meet the financial, eligibility, and benefit requirements specified in Articles 7 (commencing with Section 16990) and 10 (commencing with Section 16995) of Chapter 5 of this part.

CHAPTER 5. CALIFORNIA HEALTHCARE FOR INDIGENTS PROGRAM

Article 1. General

16940. (a) The department shall, each fiscal year, determine the percentage of moneys appropriated for the purposes of this chapter. For the 1989–90 fiscal year, these percentages shall be 59.5 percent from the Hospital Services Account, 12.2 percent from the Physician Services Account, and 28.3 percent from the Unallocated Account. These percentages shall be applied as specified in this chapter.

(b) (1) There is, in the County Health Services Fund, the California Health Care for the Indigent Program Account.

(2) For purposes of this chapter, "CHIP Account" means the account created by this section

(3) The following amounts shall be deposited in the CHIP Account:

(A) Moneys appropriated for the purpose of this chapter.

(B) Any moneys appropriated by the Legislature to the CHIP Account.

(c) Moneys deposited in the CHIP Account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this chapter, shall not be transferred to any other fund or account 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.

16941. (a) The amount appropriated and available for the purposes of this chapter shall be allocated to each MISP county in accordance with the ratios established in subdivision (b)

(b) Allocations shall be made to each county by multiplying the amount appropriated for the purposes of this chapter by each percentage listed below:

County	CHIP Allocation
Alameda	4.7427%
Contra Costa	1.8032%
Fresno	2.6855%
Kern	1.7083%
Lake	0.1826%
Los Angeles	43.8057%
Mendocino	0.2664%
Merced	0.7244%
Monterey	1.2937%
Orange	5.1382%
Placer	0.3697%
Riverside	3.1828%
Sacramento	3.2922%
San Bernardino	3.7972%
San Diego	5.9971%
San Francisco	5.3898%
San Joaquin	1.7413%
San Luis Obispo	0.8096%
San Mateo	1.4582%
Santa Barbara	0.7918%
Santa Clara	5.2450%
Santa Cruz	0.7709%
Stanislaus	1.2793%
Tulare	1.3768%
Ventura	1.5472%
Yolo	0.6004%

16942 (a) It is the intent of the Legislature that funds appropriated for the purposes of this chapter be administered, to the extent possible, in the same manner and according to same conditions and requirements as funds appropriated pursuant to Section 16703. The requirements of Sections 16704.1 and 16718 apply to services supported by funds appropriated for the purposes of this chapter.

(b) Except as specifically provided in this chapter, the authority of each county established pursuant to Section 16717 shall remain unaffected.

(c) Services, associated costs, and socio-demographic characteristics of persons served by each county under Section 17000 and supported in whole or in part by funds appropriated pursuant to this chapter shall be incorporated into the reports required pursuant to Sections 16706, 16716, and 16915.

16945. (a) Of those allocations made pursuant to Section 16941 for the 1989–90 fiscal year, 59.5 percent shall be used to support uncompensated services provided by county and noncounty hospitals.

(b) For allocations under Section 16941 for the 1990–91 fiscal year, the department shall establish that percentage of the total 1990–91 fiscal year appropriation to the CHIP Account which derives from the Hospital Services Account of the fund.

(c) The percentages established in subdivisions (a) and (b), when applied to the amount of each MISP county's annual allocation pursuant to Section 16941, constitute the minimum amount of the allocation which is reserved for payment or support of uncompensated services provided by hospitals licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

(d) The amount of funds calculated in subdivision (c) shall be referred to as the hospital services funding portion of each county's allocation made pursuant to Section 16941.

16945. (a) The department shall annually verify and transmit to each MISP county the figures specified in subdivision (c), using data supplied by the office.

(b) (1) For purposes specified in subdivision (c), the office shall use data from the quarterly reports required by Section 443 32 of the Health and Safety Code.

(2) For the 1989–90 fiscal year computations, the office shall use the 1988 calendar year data, as adjusted by the office, existing on the statewide file on September 1, 1989.

(3) For 1990–91 fiscal year computations, the office shall use the 1989 calendar year data, as adjusted by the office, existing on the statewide file on June 15, 1990

(4) The definitions, procedures, and data elements specified in Chapter 3 (commencing with Section 16920) shall be used in all computations required in subdivision (c).

(c) The office shall compute the following data on uncompensated care costs reported by hospitals located within each MISP county:

(1) The sum of uncompensated care costs for all hospitals

(2) The sum of uncompensated care costs for all noncounty hospitals.

(3) The sum of uncompensated care costs for all county hospitals.

(4) The uncompensated care costs of each hospital within the county.

(5) The percentage derived from dividing the result of paragraph (2) by the result of paragraph (1).

(6) The percentage derived from dividing the result of paragraph (3) by the result of paragraph (1).

(7) The percentage for each individual hospital derived from dividing each noncounty hospital's uncompensated care cost in paragraph (4) by the amount in paragraph (2)

(d) The office shall transmit to the department the data specified in subdivision (c) within 30 days of the dates specified in paragraph (2) of subdivision (b) and paragraph (3) of subdivision (b) of this section.

16946. (a) The hospital services account portion of each county's

allocation pursuant to Section 16941 shall be divided into two amounts by:

(1) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (5) of subdivision (c) of Section 16945.

(2) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (6) of subdivision (c) of Section 16945.

(b) The amount of each county's Hospital Services Account funding portion calculated in paragraph (1) of subdivision (a) shall be used for payment or support of services provided by noncounty hospitals within each county. This amount for each county shall be further divided into two equal parts, as follows:

(1) The first part shall be allocated to each noncounty hospital within a MISP county in amounts determined by multiplying the percentages specified in paragraph (7) of subdivision (c) of Section 16945 by the amount of the first part.

(2) The remaining 50 percent of the funds from the Hospital Services Account shall be distributed by the county to hospitals within the county, including those under contract with the county, to maintain access to emergency care and to purchase other necessary hospital services for unsponsored or medically indigent persons. Prior to distributing funds to hospitals, each managed care county shall consult with the hospitals within the county and consider the historic and projected patterns of care provided by hospitals within the county to unsponsored patients, geographic catchment areas within both the urban and nonurban areas of the county, unique costs associated with treating disproportionate numbers of severely ill indigent patients, and disproportionate losses sustained by hospitals in the provision of care to unsponsored and medically indigent patients.

(c) The amount of each county's Hospital Services Account funding portion calculated in paragraph (2) of subdivision (a) may be used for the payment or support of services provided in county hospitals or noncounty hospitals as determined by each MISP county.

(d) As a condition of receiving funds under this section, each MISP county shall require each county and noncounty hospital to do all of the following.

(1) Maintain the same number and designation of emergency room and trauma care permits as existed on the effective date of this part.

(2) Provide data and reports on the use and expenditure of all funds received. This information shall be in a form and according to procedures specified by the county and the department.

(3) Assure that funds received pursuant to this section are used only for uncompensated care services for persons eligible under this part.

(e) In the event a county or noncounty hospital does not comply with the provisions of this section, the county shall recover any funds

received and may deny further payments required by this section until the hospital demonstrates compliance.

Article 3. Physician Services

16950. (a) Twelve and two tenths percent, or that portion of the CHIP Account derived from the Physician Services Account in a fiscal year, of each county's allocation under Section 16941 shall be used for the support of or payment for uncompensated physician services.

(b) Up to 50 percent of the moneys provided pursuant to subdivision (a) may be used by counties to pay for new contracts with private physicians for provision of emergency, obstetric, and pediatric services in facilities which are not owned or operated by a county, and where access to those services has been severely restricted. The contracts may provide for partial or full reimbursement for physician services provided to patients described in subdivision (f) of Section 16952, and shall be subject to the provisions in Sections 16955, 16956, 16957, and 16958.

(c) At least 50 percent of the moneys provided pursuant to subdivision (a) shall be transferred to the county Physician Services Account established in accordance with Section 16952 and administered in accordance with Chapter 3.5.

16950.1. The twenty-four million nine hundred fifteen thousand dollars ($24,915,000) appropriated by the chapter adding this part to the Welfare and Institutions Code for physician services shall be allocated to MISP counties in accordance with percentages established in Section 16941. These funds shall be administered in accordance with subdivisions (b) and (c) of Section 16950.

Article 3.5. Physician Services Account

16951. As a condition of receiving funds pursuant to this chapter, each county shall establish an emergency medical services fund as authorized by subdivision (a) of Section 1797.98 of the Health and Safety Code. This section shall not be interpreted to require any county to impose the assessment authorized by Section 1465 of the Penal Code.

16952. (a) Each county shall establish within its emergency medical services fund a Physician Services Account. Each county shall deposit in the Physician Services Account those funds appropriated by the Legislature for the purposes of the physician services account of the fund.

(b) Funds deposited in the Physician Services Account in the county emergency medical services fund shall be exempt from the percentage allocations set forth in subdivision (a) of Section 1797.98. However, funds in the county Physician Services Account shall not be used to reimburse for physician services provided by physicians employed by county hospitals.

No physician who provides physician services in a primary care clinic which receives funds from this act shall be eligible for reimbursement from the Physician Services Account for any losses incurred in the provision of those services.

(c) The county physician services account shall be administered by each county, except that a county electing to have the state administer its medically indigent adult program as authorized by Section 16709, may also elect to have its county physician services account administered by the state in accordance with Section 16954.

(d) Costs of administering the account shall be reimbursed by the account, up to 10 percent of the amount of the account.

(e) For purposes of this chapter "administering agency" means the agency designated by the board of supervisors to administer this chapter, or the department, in the case of those counties electing to have the state administer this chapter on their behalf.

(f) The county Physician Services Account shall be used to reimburse physicians for losses incurred due to patients who are unable to pay for services rendered, and are not eligible for Medi-Cal, medicare, private insurance, or any other federal, state, or county program which provides reimbursement for physician services.

(g) Reimbursement for losses shall be limited to emergency services as defined in Section 16953, obstetric, and pediatric services.

(h) No physician shall be reimbursed for more than 50 percent of the losses submitted to the administering agency.

16953. (a) For purposes of this chapter "emergency services" means physician services in general acute care hospitals which provide basic or comprehensive emergency services for emergency medical conditions.

(b) For purposes of this chapter, "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, which in the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction to any bodily organ or part.

(c) It is the intent of this section to allow reimbursement for all inpatient and outpatient services which are necessary for the treatment of an emergency medical condition as certified by the attending physician or other appropriate provider.

16953.1. A physician who is an independent contractor, who is providing emergency medical coverage for a basic or comprehensive general acute hospital emergency department, and who is not compensated for nonpaying patients by the hospital as part of the contractual agreement shall not be disqualified from seeking reimbursement from the Emergency Medical Services Fund for the sole reason that the hospital provides billing and collection services and makes payments to the emergency physician based on a

percentage of the physician's gross billings.

16954. As a condition of having the state administer a county's Physician Services Account, each county shall do all of the following:

(a) Contract with the department to administer its county physician services account.

(b) Transfer all funds appropriated to the county for purposes of the county Physician Services Account to the department under such conditions as the department may require.

(c) Agree to uniform operating and reimbursement policies regarding the physician services account which shall be mutually established by the participating counties in conjunction with the department.

16955. Reimbursement for losses incurred by any physician shall be limited to services provided to a patient defined in subdivision (f) of Section 16952, and where all of the following conditions have been met:

(a) The physician has inquired if there is a responsible third-party source of payment.

(b) The physician has billed for payment of services.

(c) A period of not less than six months has passed from the date the physician billed the patient or responsible third-party, during which time the physician has made reasonable efforts to obtain reimbursement and has not received reimbursement for any portion of the amount billed.

(d) The physician has stopped any current, and waives any future collection efforts to obtain reimbursement from the patient.

16956. The administering agency shall establish procedures and time schedules for submission and processing of reimbursement claims submitted by physicians in accordance with this chapter.

(b) Schedules for payment established in accordance with this section shall provide for disbursement of the funds available in the account periodicaly and at least annually to all physicians who have submitted claims containing accurate and complete data for payment by the dates established by the administering agency.

(c) Claims which are not supported by records may be denied by the administering agency, and any reimbursement paid in accordance with this chapter to any physician which is not supported by records shall be repaid to the administering agency, and shall be a claim against the physician.

(d) Any physician who submits any claim for reimbursement under this chapter which is inaccurate or which is not supported by records may be excluded from reimbursement of future claims under this chapter.

(e) A listing of patient names shall accompany a physician's claim, and those names shall be given full confidentiality protections by the administering agency.

16957. Any physician who submits any claim in accordance with this chapter shall keep and maintain records of the services rendered, the person to whom services were rendered, and any

additional information the administering agency may require, for a period of three years after the services were provided.

16958. If, after receiving payment from the account, a physician is reimbursed by a patient or a responsible third-party, the physician shall notify the administering agency and the physician's future payment of claims from the account shall be reduced accordingly. In the event there is not a subsequent submission of a claim for reimbursement within one year, the physician shall reimburse the account in an amount equal to the amount collected from the patient or third-party payor, but not more than the amount of reimbursement received from the account.

Article 4. Other County Health Services

16960. Twenty-eight and three-tenths percent, or that percentage of the program account deriving from the Unallocated Account of the fund in a fiscal year of each MISP county's allocation under Section 16941, shall be expended consistent with Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, at county discretion, to maintain and enhance health care services for patients unable to pay, and for services which will not be covered by private insurance or by a program paid for in whole or in part by the federal government. In those MISP counties where city public health departments exist, the county shall give consideration to those agencies in the use of funds received pursuant to this section.

Article 5. Child Health and Disability Prevention

16970. As a condition of receiving funds under this chapter, a county shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 323.7 of the Health and Safety Code upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program or is covered under another publicly funded program, or the services are payable under private insurance coverage. A county may require that hospitals, physicians, and other providers receiving funds appropriated pursuant to this part participate in complying with this section.

Article 6. County Application

16980. (a) The department shall no later than January 1, 1990, make monthly payments of county allocations made pursuant to Section 16941 upon application of the county assuring that it will comply with the provisions of this part. Payments shall be made on a monthly basis. Funding made available pursuant to this part shall

be included within the agreement required by Section 16704.

(b) Each county shall include information on programs and services which will receive funding under this chapter as part of its annual plan and budget submitted pursuant to Section 16700. The department shall review and approve this information for compliance with this part.

16981. (a) The department shall conduct fiscal and program reviews to ensure county compliance with the provisions of this part, and shall report annually the results of these reviews to the Legislature. The department may withhold funds, up to the total amount of funds allocated under this chapter, if a county fails to correct deficiencies in the program after receiving written notice of noncompliance from the department.

(b) The department shall recoup funds which were provided pursuant to this chapter if they were not encumbered or expended according to the requirements of this chapter within the fiscal year according to procedures and reports required pursuant to Section 16706. The funds shall revert to the CHIP Account.

Article 7. Financial Maintenance of Effort

16990. (a) Any county receiving an allocation pursuant to this chapter shall, at a minimum, maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988–89 fiscal year, provided that this amount shall be adjusted annually by the amount of any increase in county funding required by paragraph (2) of subdivision (b) of Section 16704. For purposes of this article, each county's level of financial effort shall be determined by either the 1988–89 county health services plan and budget required pursuant to Section 16700 or by the report of estimated actual expenditures, revenues, and net county costs for the 1988–89 fiscal year, required pursuant to Section 16706 after review and adjustment by the department. The level of financial effort required for compliance with this section for future fiscal years shall be based upon the plan and budget submitted for the fiscal year by the county pursuant to Section 16700 and this chapter.

(b) For purposes of this section, if a county desires to use any of its allocation pursuant to Section 16941 for programs and costs not reported as part of the plan and budget required by Section 16700, the county, as a condition of using its allocation for these purposes, must maintain an amount of county funding for those programs and costs at least equal to the 1988–89 fiscal year levels.

(c) Moneys received by a county under this chapter shall be accounted for as revenue in the plan and budget which is required pursuant to Section 16700 and shall not be used as county matching funds for purposes of Sections 16703 and 16707, or any other program requiring a county match.

Article 8. Newly Legalized Person Health Services Appropriation and Funding Guarantee

16991. (a) The sum of twenty-six million five hundred ninety-seven thousand dollars ($26,597,000) is appropriated from the General Fund to the department, for the 1989–90 fiscal year, to be allocated to each county receiving funds pursuant to subdivision (d) of Section 16703. Each county's maximum allocation under this section shall be determined as follows:

(1) The sum of one hundred twenty-six million five hundred ninety-seven thousand dollars ($126,597,000) shall be multiplied by each county's percentage determined by subdivision (d) of Section 16703.

(2) For each county, the percentage of persons newly legalized under the Immigration Reform and Control Act of 1986 (IRCA) who are residents of that county divided by the total of all IRCA newly legalized persons for all counties eligible to receive funds pursuant to this section shall be determined. The department shall utilize the most recent data from the federal Department of Health and Human Services for this purpose.

(3) Each county's percentage determined in paragraph (2) shall then be multiplied by one hundred twenty-six million five hundred ninety-seven thousand dollars ($126,597,000).

(4) For each county, the amount determined in paragraph (3) shall be subtracted from the amount determined in paragraph (1). If the resulting amount is negative, no funds shall be allocated to that county. If the resulting amount is positive, that amount shall be the county's maximum allocation and shall be made available to that county in the same manner and according to the same procedures and requirements that govern funds made available pursuant to subdivision (d) of Section 16703, except that the department shall make the payment of each county's allocation as determined above in one lump sum on or before January 1, 1990.

(5) If the sum of funding that a county received from its allocation pursuant to Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to Section 16703 in fiscal year 1988–89 the state shall reimburse the county for the amount of the difference. For the 1990–91 fiscal year, if the sum of funding received from its allocation, pursuant to Section 16703 and the amount of reimbursement it received from State Legalization Impact Assistance Grant Funding for indigent care that year is less than the amount of funding the county received pursuant to Section 16703 in the 1988–89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement.

(6) The calculations specified in paragraph (5) shall be performed after the end of the fiscal year after all claims from a county for that fiscal year have been adjudicated. The calculations shall be performed within 90 days of the date that the final claim for a fiscal year is submitted by the county.

(7) If a county submits additional claims for services provided in a specific year and has received funds under paragraph (5) above for that year, the department shall reimburse the General Fund up to amount received under paragraph (5) from federal State Legalization Impact Assistance Grant funds otherwise payable to the county based upon the additional claims.

(b) In determining if a county has made reasonable efforts to document and claim federal State Legalization Impact Assistance Grant funding, the department may require a county to utilize statistically valid sampling methods or to utilize the federal Cost Documentation System for Social Security matching.

(c) To the extent allowed by federal law, the department shall make quarterly prospective payments of federal State Legalization Impact Assistance Grant funds to counties for the 1988–89, 1989–90, and 1990–91 fiscal years SLIAG claims for indigent health services. Prospective payments shall not exceed the total amount of a county's 1987–88 fiscal year claim, as adjusted by the department, on an annualized basis. As a condition of receiving a prospective payment, the county shall certify that it intends to submit claims exceeding the amount advanced. A county shall be liable for any overpayments or federal sanctions in the event of an excess drawdown of federal State Legalization Impact Assistance Grant funds.

Article 9. Capital Outlay

16994. (a) (1) Ninety percent of the amount appropriated for the purposes of this article shall be allocated to MISP counties according to the percentages specified in this chapter.

(2) The remaining 10 percent shall be allocated to CMSP counties, according to the following procedures:

(A) Calculating the sum of uncompensated care costs for all hospitals in each CMSP county.

(B) Divide the sum of subparagraph (A) by the sum of uncompensated care costs for all hospitals with all CMSP counties.

(C) Multiply the quotient derived from the application of subparagraph (B) by the total amount appropriated for the purposes of this article.

(b) Funding utilized under this section shall be for capital expediture and equipment acquisition purposes associated with the direct delivery of patient care. In addition, each county may utilize up to two million dollars ($2,000,000) or 10 percent of its allocation under this section, whichever is greater, on a one-time basis only in the 1989–90 fiscal year to restore county special fund balances to their July 1, 1988 levels. Funds from this section may be allocated for this

purpose only in circumstances where the county board of supervisors transferred moneys from those special funds to the county general fund or to health facilities enterprise funds in order to support indigent health care services in the 1988–89 fiscal year.

(c) Except as provided in subdivision (a), no less than 67 percent of the moneys a county receives under this section shall be allocated to county acute care hospitals, University of California hospitals, or any private hospital licensed pursuant to subdivision (d) of Section 1250 of the Health and Safety Code, which operates an emergency room or a burn unit or outpatient clinic. The moneys may be expended for facility repair, renovation, remodeling, expansion, or acquisition or equipment needs.

(d) Except as provided in subdivision (b), up to 33 percent of the moneys a county receives under this section may be expended for capital improvement and equipment needs for outpatient clinics, or mental health facilities, or public health clinics or licensed community and free clinics or clinics operated by tribes or tribal organizations.

(e) Noncounty hospitals shall utilize funds received under this section only for capital expenditures related to emergency room, burn unit, and outpatient clinics.

(f) County hospitals may utilize funds received under this section for expenditures related to inpatient, outpatient, emergency room, or burn unit services.

(g). Funds utilized from this section shall be for capital expenditure purposes associated with the direct treatment of patients.

(h) Each county receiving moneys under this section shall submit a plan for the use of these moneys to the department for review and approval prior to making any commitment for the expenditure of such funds. Any subsequent revision to the county's capital improvements plan shall also be submitted for review and approval. The department's approval authority shall be limited to a determination of whether the county's plan conforms to statutory provisions as contained in this section and part. The department may establish necessary procedures and forms for the submission, review, and approval of county plans and reports.

(i) The expenditure of moneys authorized by this section may be made without regard to fiscal year provided that moneys authorized by this section shall be available for encumbrance for three fiscal years and for expenditure for five fiscal years, including the 1989–90 fiscal year. At the end of five years any moneys which have not been expended shall be recouped by the department.

(j) Counties shall submit an annual report, in accordance with guidelines provided by the department, detailing the use and actual expenditure of moneys received pursuant to this section. The department shall recoup the amount of any county expenditure which does not conform to the provisions of this section.

(k) Funds provided under this section shall be added to the

allocations and payments to MISP counties pursuant to this chapter and to CMSP counties pursuant to this chapter.

(*l*) For the purposes of this section, "capital expenditures" means expenditures for fixed assets, major movable equipment, fixtures, structures, and improvements as defined for counties in "Accounting Standards and Procedures for Counties" issued by the Office of the Controller, Division of Local Government, Fiscal Affairs and for other providers as defined by generally accepted standards of accounting practices

Article 10. Eligibility and Benefit Requirements

16995. (a) To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under Section 17000 or reduce the scope of benefits compared to those which were in effect on November 8, 1988.

(b) Funds received by a county pursuant to this chapter shall not be used to support health services provided to persons detained in a county or city jail or other correctional facility.

16995.1. Receipt of funding pursuant to this chapter shall not relieve a county of its obligation to provide indigent health care as required by Section 17000.

16995.2 Any county receiving funds under this chapter shall maintain at least the same number of outpatient visits in the 1989–90 and 1990–91 fiscal years as were provided, either directly or through contract, in the 1988–89 fiscal year.

CHAPTER 6. CHILDREN'S HOSPITALS

16996. For purposes of this chapter, "children's hospital" means the following facilities:

(a) Valley Children's Hospital, Fresno.

(b) Earl and Loraine Miller Children's Hospital Medical Center, Long Beach.

(c) Children's Hospital of Los Angeles, Los Angeles.

(d) Children's Hospital Medical Center of Northern California, Oakland.

(e) Children's Hospital of Orange County, Orange.

(f) Children's Hospital of Stanford, Palo Alto.

(g) Children's Hospital and Health Center, San Diego.

16996.1. Funds appropriated to the department for the purposes of this chapter shall be distributed as follows:

(a) The department shall compute the annual amount of financial assistance available to each eligible children's hospital based upon the ratio of each hospital's uncompensated care costs to the total uncompensated care costs of all children's hospitals in the state.

(b) The department shall enter into a contract with each children's hospital receiving funding pursuant to this section and

may make quarterly payments provided that the hospital has complied with paragraph (3) of subdivision (a) of Section 16996.2.

(c) Each children's hospital shall, as a condition of receiving financial assistance under this section, submit reports to the department, as required by the department, describing its use of funds received pursuant to this section.

16996.2. (a) As a condition of receiving funds under Section 16996.1, a hospital shall provide, or arrange and pay for, medically necessary followup treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 323.7 of the Health and Safety Code upon referral by Child Health and Disability Prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) The department shall report to the Legislature on the distribution and use of funds provided to hospitals under Section 16921 on an annual basis.

CHAPTER 8. OPERATION OF PART

16997.1. This part shall remain operative only until July 1, 1991, and 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. The sum of one billion two hundred twelve million nine hundred sixty thousand dollars ($1,212,960,000) is hereby appropriated from the Cigarette and Tobacco Products Surtax Fund, according to the following schedule:

(a) Seven hundred two million five hundred six thousand dollars ($702,506,000) for the 1989–90 fiscal year, as follows:

(1) Two hundred ninety-eight million two hundred fifty-two thousand dollars ($298,252,000) from the Hospital Services Account to the State Department of Health Services, as follows:

(A) Fifty million dollars ($50,000,000) for allocation to counties for capital outlay purposes, pursuant to Article 9 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Thirty-seven million sixteen thousand dollars ($37,016,000) for allocation to hospitals for uncompensated hospital services, pursuant to Chapter 3 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(C) Nine hundred seventy thousand dollars ($970,000) for state administration.

(D) Two million ($2,000,000) for allocation to children's hospitals, pursuant to Chapter 6 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(E) Two million nine hundred eighty-eight thousand dollars ($2,988,000) for allocation to CMSP counties for uncompensated

hospital services, pursuant to Section 16930 of the Welfare and Institutions Code.

(F) Four million nine hundred eighty thousand dollars ($4,980,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(G) Two hundred million seventy-four thousand ($200,074,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two hundred twenty-five thousand dollars ($225,000) from the Hospital Services Account to the Office of Statewide Health Planning and Development, for state administration.

(3) Eighty-five million two hundred fifteen thousand dollars ($85,215,000) from the Physician Services Account to the State Department of Health Services, as follows:

(A) Twenty-four million nine hundred fifteen thousand dollars ($24,915,000) for allocation to counties for uncompensated physician services, pursuant to Section 16950.1 of the Welfare and Institutions Code.

(B) Four million nine hundred thirty thousand dollars ($4,930,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(C) Nine million nine hundred forty-seven thousand dollars ($9,947,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(D) One million nine hundred ninety-five thousand dollars ($1,995,000) for allocation to CMSP counties for uncompensated physician services, pursuant to Section 16930 of the Welfare and Institutions Code

(E) One million nine hundred ninety-two thousand dollars ($1,992,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(F) Forty-one million ninety-nine thousand dollars ($41,099,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(G) Three hundred thirty-seven thousand dollars ($337,000) for state administration.

(4) One hundred sixty-eight million thirty-eight thousand dollars ($168,038,000) from the Unallocated Account to the State Department of Health Services, as follows:

(A) Thirty-two million two hundred eighty-eight thousand dollars ($32,288,000) for allocation to counties for capital outlay purposes, pursuant to Article 9 of Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Ten million dollars ($10,000,000) for county data systems, pursuant to Chapter 2 of Part 4.7 of Division 9 of the Welfare and

Institutions Code.

(C) Fourteen million seven hundred eighty-nine thousand dollars ($14,789,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(D) Nine million nine hundred forty-seven thousand dollars ($9,947,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(E) One million nine hundred eighty-nine thousand dollars ($1,989,000) for allocation to CMSP counties for uncompensated health care services pursuant to Section 16930 of the Welfare and Institutions Code.

(F) Two million nine hundred eighty-two thousand dollars ($2,982,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(G) Ninety-five million three hundred nineteen thousand dollars ($95,319,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(H) Seven hundred twenty-four thousand dollars ($724,000) for state administration.

(5) One hundred fifteen million dollars ($115,000,000) from the Health Education Account to the State Department of Health Services, as follows:

(A) Forty-one million five hundred ninety-four thousand dollars ($41,594,000) for establishment of competitive grants, pursuant to this act.

(B) One million four hundred sixty-two thousand dollars ($1,462,000) for state administration.

(C) Two million three hundred four thousand ($2,304,000) for operation of the Tobacco Education Oversight Committee created pursuant to Section 24162 of the Health and Safety Code and the contract for a systematic and independent evaluation conducted pursuant to Section 24164 of the Health and Safety Code, and development of necessary data collection and management.

(D) Fourteen million three hundred forty-nine thousand ($14,349,000) for health education media campaigns, pursuant to Section 24164 of the Health and Safety Code.

(E) Nineteen million six hundred ninety-six thousand dollars ($19,696,000) for services provided throught the Child Health Disability Prevention Program contained in Article 3.4 of Chapter 2 of Division 1 of the Health and Safety Code pursuant to Section 24165.3.

(F) Thirty-five million five hundred ninety-five thousand dollars ($35,595,000) for allocation to local lead agencies upon the department's approval of local plan pursuant to Section 24164 of the Health and Safety Code.

(6) Thirty-six million dollars ($36,000,000) to the State Department of Education for purposes of implementing its duties

under Chapter 1.2 (commencing with Section 24160) of Division 20 of the Health and Safety Code, as follows:

(A) (i) Nine hundred thousand dollars ($900,000) for state administration.

(ii) The State Department of Education shall notify the chairperson of the committees of each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee not less than 30 days prior to implementation of this paragraph pursuant to Section 28 of the Budget Act of 1989, Chapter 93 of the Statutes of 1989.

(B) Two million five hundred thousand dollars ($2,500.000) for county offices of education administration, to be allocated pursuant to subdivision (o) of Section 24167 of the Health and Safety Code.

(C) Thirty-two million six hundred thousand dollars ($32,600,000) for local assistance. Ninety percent of these funds shall be allocated to school districts and county offices based on the average daily attendance of enrolled pupils for antitobacco education activities and the remaining 10 percent shall be awarded as grants pursuant to Section 24168 of the Health and Safety Code.

(b) Five hundred ten million four hundred fifty-four thousand dollars ($510,454,000) for the 1990–91 fiscal year, as follows:

(1) One hundred ninety-eight million four hundred eighty-seven thousand dollars ($198,487,000) from the Hospital Services Account to the State Department of Health Services, as follows:

(A) One million eight hundred ninety-six thousand dollars ($1,896,000) for allocation to children's hospitals, pursuant to Chapter 6 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(B) Two million eight hundred thirty-one thousand dollars ($2,831,000) for allocation to CMSP counties for uncompensated hospital services, pursuant to Section 16930 of the Welfare and Institutions Code.

(C) Four million nine hundred sixty-one thousand dollars ($4,961,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(D) One hundred eighty-eight million seven hundred ninety-nine thousand dollars ($188,799,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Fifty-six million seven hundred twenty-eight thousand dollars ($56,728,000) from the Physician Services Account to the State Department of Health Services, as follows:

(A) Four million five hundred eighty thousand dollars ($4,580,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(B) Nine million eight hundred ninety-four thousand dollars ($9,894,000) for expansion of prenatal services, pursuant to Section

14148.5 of the Welfare and Institutions Code.

(C) One million eight hundred sixty-six thousand dollars ($1,866,000) for allocation to CMSP counties for uncompensated physician services, pursuant to Section 16930 of the Welfare and Institutions Code.

(D) One million nine hundred eighty-six thousand dollars ($1,986,000) for transfer to the County Medical Services Program Account, pursuant to Section 16709.5 of the Welfare and Institutions Code.

(E) Thirty-eight million four hundred two thousand dollars ($38,402,000) for allocation to counties participating in the California Health Care for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(3) One hundred seventeen million forty-eight thousand dollars ($117,048,000) from the Unallocated Account, to the State Department of Health Services as follows:

(A) Thirteen million six hundred eighty-five thousand dollars ($13,685,000) for clinic services, pursuant to Part 6.9 of Division 1 of the Health and Safety Code.

(B) Nine million eight hundred ninety-four thousand dollars ($9,894,000) for expansion of prenatal services, pursuant to Section 14148.5 of the Welfare and Institutions Code.

(C) One million eight hundred forty-five thousand dollars ($1,845,000) for allocation to CMSP counties for uncompensated health care services pursuant to Section 16930 of the Welfare and Institutions Code.

(D) Two million nine hundred seventy-one thousand dollars ($2,971,000) for transfer to the County Medical Services Account pursuant to Section 16709.5 of the Welfare and Institutions Code.

(E) Eighty-eight million six hundred fifty-three thousand dollars ($88,653,000) for allocation to counties participating in the California Healthcare for Indigents Program, pursuant to Chapter 5 of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(4) Twenty-five million dollars ($25,000,000) to the State Department of Mental Health for local mental health services.

(5) Eighty million five hundred ninety-one thousand dollars ($80,591,000) from the Health Education Account to the State Department of Health Services, as follows:

(A) Eleven million four hundred twenty-nine thousand dollars ($11,429,000) for competitive grants, pursuant to this act.

(B) Fourteen million two hundred eighty-eight thousand ($14,288,000) for health education media campaigns, pursuant to Section 24164 of the Health and Safety Code.

(C) Nineteen million four hundred forty-five thousand dollars ($19,445,000) for services provided through the Child Health Disability Prevention Program contained in Article 3.4 of Chapter 2 of Division 1 of the Health and Safety Code pursuant to Section 24165.3.

(D) Thirty-five million four hundred twenty-nine thousand

dollars ($35,429,000) for allocation to local lead agencies upon the department's approval of local plan pursuant to Section 24164 of the Health and Safety Code.

(5) Thirty-two million six hundred thousand dollars ($32,600,000) to the State Department of Education for local assistance. Ninety percent of these funds shall be allocated to school districts and county offices based on the average daily attendance of enrolled pupils for antitobacco education activities and the remaining 10 percent shall be awarded as grants pursuant to Section 24168 of the Health and Safety Code.

SEC. 11. Due to the necessity to implement the mandates of Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, any contract made pursuant to this act shall not be subject to Part 2 (commencing with Section 10100) of the Public Contract Code.

SEC. 12. The State Department of Health Services may adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 14105.4 and 14105.5 of the Welfare and Institutions Code, to implement this act. The adoption of those regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the department in order to implement this act shall not be subject to the review and approval of the Office of Administrative Law. These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 13. All funds derived from the imposition of taxes pursuant to Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, which are appropriated for the purposes of this act shall be used to supplement existing levels of services provided and shall not be used to fund existing levels of service.

SEC. 14. 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. 15. No funds derived from the imposition of taxes pursuant to Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, which are appropriated for the purposes of this act shall be used to pay for services except for the treatment of patients who are unable to pay for that treatment and for whom payment for the services will not be made through private coverage or by any program funded in whole or in part by the federal government.

SEC. 16. Moneys in the Hospital Services Account, the Physician Services Account, the Health Education Account, and the

Unallocated Account in the Cigarette and Tobacco Products Surtax Fund shall not be transferred to any other fund or account, except as provided in this act or other legislation, 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 to the respective account.

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

SEC. 18. (a) On or before April 15, 1990, the State Department of Health Services shall report to the Legislature on the advisability of combining into a single program funding from California Healthcare for the Indigent Program, the Medically Indigent Services Program, and the inpatient/outpatient portion of the AB 8 County Health Services Program contained in Part 4.5 (commencing with Section 16700) of Division 9 of the Welfare and Institutions Code

(b) The report shall include a recommendation from the department on the advantages and disadvantages of combining funds, major program changes that would result, an identification of the staff redirections required, and a draft of legislative language necessary to effect the change.

(c) The report shall also contain information obtained from all counties on the amount of expenditures and net costs incurred for indigent health care during the 1988–89 fiscal year, and shall separately identify the funds listed in subdivision (a) as well as county matching funds and other expenditures of county dollars for indigent health care.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow the state to fully implement the Tobacco Tax and Health Protection Act of 1988, Proposition 99 on the ballot for the General Election held November 8, 1988, to provide increased funding for programs to enhance the health of Californians, and to provide for compensation to providers of health care to encourage them to increase their level of service to those persons unable to pay for those services, at the earliest possible time, and, in order to prevent avoidable injury to the public caused by the use of tobacco products, it is necessary for this act to take effect immediately.

CHAPTER 1332

An act to amend Section 1810 of the Welfare and Institutions Code, relating to juvenile correctional facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1810 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 1275 of the Statutes of 1986, is amended to read:

1810 (a) If during any fiscal year in which a county receives funds under this article, the county reduces the capacity of its juvenile homes, ranches, camps, or forestry camps below the capacity for those facilities during fiscal year 1982–83, and if during the 12-month period subsequent to the month of the reduction, or any subsequent 12-month period, there is an increase of commitments from the county's juvenile court to the Department of the Youth Authority above the number of the commitments during the 1982–83 fiscal year, the county's entitlement to funding under this article shall be reduced by an amount equivalent to the actual cost, as determined by the Department of the Youth Authority, of increasing capacity to the fiscal year 1982–83 level or by an amount equal to the increase in commitments from the juvenile court to the Department of the Youth Authority, whichever is less. However, if within 90 days of receiving notice from the department of the extent of the increase in commitments, the county increases its juvenile home, ranch, camp or forestry camp capacity for the rest of the current fiscal year in an amount equal to the reduction of that capacity, or in an amount equal to the increase in commitments from the juvenile court to the Department of the Youth Authority, whichever is less (except that the increases in capacity shall be in increments of 10 beds to the extent required to meet or surpass the required increase, but not in excess of the amount of the reduction of capacity), the funding shall not be reduced.

Any reduction shall be applied to the next payment or payments to which the county is otherwise entitled.

(b) Any commitment of funds or reduction in entitlement required under subdivision (a) shall not reduce the county's entitlement below the level of funding required to maintain the programs or services mandated by Chapter 1071 of the Statutes of 1976, as approved by the Board of Control for fiscal year 1977–78 and as increased by inflationary factors determined by the Department of Finance.

(c) A county that provides juvenile home, ranch, or camp space to another county pursuant to contract shall not have its entitlement

reduced pursuant to this section if it reduces its capacity based on a reduction in the amount of space provided pursuant to contract.

(d) The provisions of this section shall not be applicable to a reduction in capacity occurring as a result of an act of God. In addition, this section does not apply to the County of Santa Barbara because of an involuntary loss of the lease of a juvenile camp, ranch, or school facility. However, the County of Santa Barbara shall have until June 1, 1990, to develop a comparable facility, facilities, or programs. In addition, prior to June 1, 1990, funding pursuant to Section 1805 originally intended for the facility of the County of Santa Barbara which is to be closed because of the involuntary loss of the lease, shall be used to expand existing juvenile programs in the county.

(e) As used in this section, "juvenile home, ranch, camp, or forestry camp" means those facilities as are established pursuant to Article 24 (commencing with Section 880) of Chapter 2 of Part 1 of Division 2.

(f) The Director of the Youth Authority may exempt Riverside or Tulare County, or both from the sanctions required by this section for a period of three years in response to a request for exemption submitted by the county which (1) identifies the facility which is being closed, (2) outlines the county's plan to replace the facility in question or to establish programs to limit commitments to state-operated facilities, including, but not limited to, a measure providing for the construction of a new facility which requires voter approval, and outlines the county's plan to fund the operation of the new facility, and (3) demonstrates facts showing that the fiscal status of the county does not provide sufficient local general purpose revenue to continue present operations under those sanctions or that health and safety constraints require closure of an existing facility.

(g) This section shall remain in effect only until June 1, 1990, and as of that date is repealed, unless a later enacted statute, which is enacted before June 1, 1990, deletes or extends that date.

SEC. 2. Section 1810 of the Welfare and Institutions Code, as added by Section 5 of Chapter 288 of the Statutes of 1983, is amended to read:

1810. (a) If during any fiscal year in which a county receives funds under this article, the county reduces the capacity of its juvenile homes, ranches, camps, or forestry camps below the capacity for those facilities during fiscal year 1982–83, and if during the 12-month period subsequent to the month of the reduction, or any subsequent 12-month period, there is an increase of commitments from the county's juvenile court to the Department of the Youth Authority above the number of the commitments during the 1982–83 fiscal year, the county's entitlement to funding under this article shall be reduced by an amount equivalent to the actual cost, as determined by the Department of the Youth Authority, of increasing capacity to the fiscal year 1982–83 level or by an amount equal to the increase in commitments from the juvenile court to the

Department of the Youth Authority, whichever is less. However, if within 90 days of receiving notice from the department of the extent of the increase in commitments, the county increases its juvenile home, ranch, camp, or forestry camp capacity for the rest of the current fiscal year in an amount equal to the reduction of that capacity, or in an amount equal to the increase in commitments from the juvenile court to the Department of the Youth Authority, whichever is less (except that the increases in capacity shall be in increments of 10 beds to the extent required to meet or surpass the required increase, but not in excess of the amount of the reduction of capacity), the funding shall not be reduced.

Any reduction shall be applied to the next payment or payments to which the county is otherwise entitled.

(b) Any commitment of funds or reduction in entitlement required under subdivision (a) shall not reduce the county's entitlement below the level of funding required to maintain the programs or services mandated by Chapter 1071 of the Statutes of 1976, as approved by the Board of Control for fiscal year 1977–78 and as increased by inflationary factors determined by the Department of Finance.

(c) A county that provides juvenile home, ranch, or camp space to another county pursuant to contract shall not have its entitlement reduced pursuant to this section if it reduces its capacity based on a reduction in the amount of space provided pursuant to contract.

(d) The provisions of this section shall not be applicable to a reduction in capacity occurring as a result of an act of God.

(e) As used in this section, "juvenile home, ranch, camp, or forestry camp" means those facilities as are established pursuant to Article 24 (commencing with Section 880) of Chapter 2 of Part 1 of Division 2.

(f) The Director of the Youth Authority may exempt a county from the sanctions required by this section for a period of three years in response to a request for exemption submitted by the county which (1) identifies the facility which is being closed, (2) outlines the county's plan to replace the facility in question or to establish programs to limit commitments to state-operated facilities, including, but not limited to, a measure providing for the construction of a new facility which requires voter approval, and (3) demonstrates facts showing that the fiscal status of the county does not provide sufficient local general purpose revenue to continue present operations under those sanctions or that health and safety constraints require closure of an existing facility.

(g) This section shall become operative on June 1, 1990.

SEC. 3. The Legislature finds and declares, with respect to the changes in Section 1810 of the Welfare and Institutions Code made by Section 1 of this act, 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 for the following reasons:

Due to extremely high caseloads, Riverside County has had to utilize a gymnasium facility for detention of juvenile offenders. Health and safety inspections by the Department of the Youth Authority indicated that those children had to be moved from that facility and placed in another facility. Under current law, this would require a sanction against the county because these children were moved. This statute provides flexibility for waiver of that sanction.

Tulare County, due to severe budget constraints, was forced to close an antiquated juvenile detention facility with the intention of utilizing bond moneys to complete a new facility in the next three years. In the interim, it was the county's judgment to utilize both local and state funds on diversion programs in lieu of maintaining this facility. Under the very restrictive sanction requirements of current law, Tulare County would be subject to sanctions of four hundred fifty thousand dollars ($450,000) of state funds and would then have to cut diversion programs, as well as having closed the facility.

This act authorizes the Director of the Youth Authority to waive those sanctions upon making specific findings.

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 avoid cuts in needed juvenile diversion programs, it is necessary that this act take effect immediately.

CHAPTER 1333

An act to amend Section 1264 of the Unemployment Insurance Code, relating to unemployment insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1264 of the Unemployment Insurance Code is amended to read:

1264. (a) Unemployment compensation benefits, extended duration benefits, and federal-state extended benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the

Immigration and Nationality Act.

(b) Any data or information required of individuals applying for benefits specified by subdivision (a) to determine whether these benefits are not payable to them because of their alien status shall be uniformly required from all applicants for these benefits.

(c) In the case of an individual whose application for benefits specified by subdivision (a) would otherwise be approved, no determination by the department, an administrative law judge, or the appeals board that these benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.

(d) If an alien presents evidence that the Immigration and Naturalization Service has granted the alien employment authorization as a result of the alien's application for temporary residence status under the federal Immigration Reform and Control Act of 1986 (Public Law 99-603), pending a final determination on this application the department shall not do either of the following:

(1) Commence or continue to pursue any administrative or judicial action to collect benefits where there has been a final determination that these benefits have been overpaid or chargeable to the alien, because of the alien's immigration status at the time he or she performed the services compensated by his or her base period wages.

(2) Determine that the alien was overpaid benefits in the current benefit year or in any prior benefit year, if the basis for the determination is the assumption that because the alien is an applicant for temporary resident status he or she was not, while performing the services compensated by base period wages, lawfully admitted for permanent residence, lawfully present for purposes of performing the services that were compensated by his or her base period wages, or permanently residing in the United States under color of law.

(e) If the Immigration and Naturalization Service grants the application and adjusts the alien's status to that of lawful temporary resident, the department shall not take any action described in paragraph (1) of subdivision (d) or make any determination described in paragraph (2) of subdivision (d). If an alien is not in the status of being lawfully admitted for permanent residence, lawfully present for the purpose of performing the services compensated by his or her base period wages, or permanently residing in the United States under color of law, at the time the alien's lawful temporary permanent status terminates, then compensation shall not be payable on the basis of services performed by the alien after the termination.

(f) Nothing in subdivision (d) shall be construed to require the department to do any of the following:

(1) Repay any amounts collected under any present or past action as described in paragraph (1) of subdivision (d).

(2) Redetermine the eligibility for unemployment compensation

benefits of any alien who the department originally determined to be ineligible because of the alien's status at the time he or she performed the services compensated by his or her base period wages and with respect to whom the determination has become final.

(3) Apply subdivision (d) or (e) retroactively.

(g) If the United States Secretary of Labor finds that subdivisions (d) and (e) are not in conformity with the federal Unemployment Tax Act, and effective as of the date that this finding becomes final, subdivisions (d), (e), and (f) shall be inoperative and of no legal force or effect.

(h) Unless subdivisions (d), (e), and (f) have earlier become inoperative and of no legal force of effect pursuant to a finding by the Secretary of Labor under subdivision (g), subdivisions (d), (e), (f), and (g) shall remain in effect only until September 30, 1990, and as of that date shall become inoperative, unless a later enacted statute which is chaptered before September 30, 1990, deletes or extends that date. Notwithstanding this subdivision, however, the department shall not take any action to collect benefits from an individual when the collection against that individual was suspended pursuant to subdivision (e) prior to September 30, 1990.

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

In order to prevent provisions of law relating to unemployment compensation benefits for aliens who have applied for temporary resident status from becoming inoperative on September 30, 1989, it is necessary for this act to take effect immediately.

CHAPTER 1334

An act to repeal, add, and repeal Article 15 (commencing with Section 51870) of Chapter 5 of Part 28 of the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

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

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

(1) Educational technology is a valuable tool to improve and expand instruction and the learning environment, and, through its appropriate use, California's schools will meet the evolving needs of today's and tomorrow's pupils. Technology offers benefits to all levels of education, from kindergarten children to adults, from pupils of remote areas to those pupils in inner cities, from remedial education

and special education to the highest levels of scholarship and research.

(2) In this age of technology, if California is to remain on the cutting edge in the 21st century and beyond, public funds must be invested in the best possible educational programs to maximize preparation for pupils entering the work force.

(3) The Governor, in his 1987 "White Paper on K-12 Education," has cited a National Governors Association report listing, among seven major issues to be addressed in an effort to improve education in kindergarten and grades 1 to 12, inclusive, the need to make more effective use of new technologies.

(4) The California Business Roundtable report entitled "Restructuring California Education," recommends the implementation of a comprehensive plan utilizing instructional technologies as a critical component toward increased teacher productivity and pupil achievement.

(5) The Commission for the Review of the Master Plan for Higher Education states that new instructional technologies have the exciting potential for revolutionizing the educational process. Improving the quality of learning through the application of these rapidly changing and advancing technologies is a serious issue.

(6) The California Commission on Educational Quality recommends that "the evaluation of the use of technology in education is needed" to identify those applications which are most effective in the learning process.

(7) There is a need for organization at the state level which facilitates the planning, monitoring, and coordinating of educational technology across all levels of the educational process.

(b) It is the intent of the Legislature that:

(1) The educational benefits of new technologies be distributed efficiently and equitably to all students.

(2) Coordinating, planning, and establishing policy for the application of educational technology in California, occur within a framework and in a manner involving representatives from all educational levels, along with representatives of the business community.

(3) That the public educational sector and the private business and industry sector form a partnership to provide the best and most comprehensive education in the applications of techology for all students enrolled in public educational institutions in this state.

SEC. 2. Article 15 (commencing with Section 51870) of Chapter 5 of Part 28 of the Education Code is repealed.

SEC. 3. Article 15 (commencing with Section 51870) is added to Chapter 5 of Part 28 of the Education Code, to read:

Article 15. The Farr-Morgan-Quackenbush Educational Technology Act of 1989

51870. The provisions set forth in this article, which shall be

known and may be cited as the Farr-Morgan-Quackenbush Educational Technology Act of 1989, are intended to accomplish the following:

(a) Identify educational problems in kindergarten through postsecondary education that can be solved effectively with the aid of technology.

(b) Develop an intersegmental approach to statewide planning for technology that includes kindergarten to grade 12, inclusive, and the segments of higher education.

(c) Improve the quality and effectiveness of instruction and subject area mastery through technology, and promote greater cost effectiveness of education through its use.

(d) Develop clear statewide planning and evaluation objectives for educational technology while providing incentives for coordinated local planning and evaluation at school site and district levels.

(e) Provide an environment where instructional technology uses can be conceived, developed, implemented, and evaluated at the school level with district, regional, state, and private sector support.

(f) Encourage sensitivity to the need for equity of access to educational technology for all pupils, while allowing for targeted uses by grade, subject area, or special needs.

(g) Make provision for expanded research and evaluation of innovative models, and disseminate effective educational technology programs.

(h) Identify resources to improve existing preservice and in-service programs to mitigate the current lack of expertise of many school faculty in applications of instructional technology.

(i) Encourage regional networks to provide needed technical assistance, including planning, evaluation, and staff development for schoolsite and district programs.

(j) Support a network of instructional television agencies providing statewide instructional television services.

(k) Encourage collaboration among public schools maintaining kindergarten and grades 1 to 12, inclusive, institutions of higher education, and business and industry in the planning and implementation of educational technology programs.

51871. The following definitions, unless the context otherwise requires, shall govern the construction of this article:

(a) "Commission" means the California Planning Commission for Educational Technology.

(b) "Committee" means the Educational Technology Committee.

(c) "Computer education" means the process of teaching people about computers, including, but not limited to, computer skills training, computer assisted instruction, computer programming, and computer literacy training.

(d) "Educational technology" means those electronic systems and networks that may be used as instructional devices available for

classroom instruction. These electronic systems may include, but are not limited to, computers, televisions, electronic bulletin boards, video discs, compact discs, telecommunication satellites, and robotics.

(e) "Equipment" means any hardware, device, or telecommunications technology that delivers instructional programming.

(f) "Instructional programming" means programs with content which is closely related to the adopted formal curriculum of the public schools.

(g) "Local educational agency," for purposes of this article, means any school district or county office of education, including any school district or county office of education applying for grant funding on behalf of any programs that serve children.

(h) "Parental involvement" means that engagement of parents in the educational process, including, but not limited to, participation in development of local technology use plans and programs which provide guidelines for helping students to increase learning skills through technology-assisted instruction.

(i) "Regional resource consortia" means an entity designated pursuant to this article to serve as a collaborative agency to link and coordinate the educational technology resources of the public institutions of higher education, local educational agencies, and business and industry in the private sector.

(j) "Technology use plan" means a locally designed plan in which a local educational agency defines how technology will be used to enhance instruction.

51872. (a) The California Planning Commission for Educational Technology is hereby established as a 19-member commission. Each member shall be appointed for a term which shall commence on January 1, 1990, and end on June 30, 1992. The appointments shall be made as follows:

(1) The Governor shall appoint ten members as follows:

(A) One public member.

(B) One trustee of the California State University.

(C) One member of the Board of Governors of the California Community Colleges.

(D) One representative from instructional television agencies who shall be the same individual who is appointed to the Educational Technology Committee.

(E) One member of the State Board of Education.

(F) Two business representatives with experience in applications of technology.

(G) One certificated practicing elementary school teacher who represents an association of California teachers.

(H) One certificated practicing secondary school teacher who represents an association of California teachers.

(I) One individual who is a member of the California Postsecondary Education Commission.

(2) The Superintendent of Public Instruction, or his or her designee shall serve on the commission, and the superintendent shall appoint three members as follows:

(A) One principal who is a member of a California school administrators' association who shall be the same individual who is appointed to the Educational Technology Committee.

(B) One member of a California school board association.

(C) One certificated practicing school teacher who represents an association of California teachers.

(3) The Senate Rules Committee shall appoint two members as follows:

(A) One representative from a county office of education.

(B) One business representative with experience in applications of technology who shall be the same individual who is appointed to the Educational Technology Committee.

(4) The Speaker of the Assembly shall appoint two members as follows:

(A) One representative from a public teacher preparation program.

(B) One business representative with experience in applications of technology who shall be the same individual who is appointed to the Educational Technology Committee.

(5) The President of the University of California shall appoint one member representing the University.

(b) In order to assure a broad variety of business interests on the commission, in making these appointments, the Governor, President pro Tempore of the Senate, and the Speaker of the Assembly shall consult and cooperate so that no single private business entity shall be represented on the commission by more than one member.

(c) The commission shall be responsible for the duties specified in Section 51872.5.

51872.5. The responsibilities of the California Planning Commission for Educational Technology shall include the following:

(a) Prior to January 1, 1992, developing a state master plan for educational technology, including priorities to guide the use and integration of educational technology in the public elementary, secondary, and postsecondary schools, taking into account and building upon, existing district, regional, and statewide plans. The plan shall be presented to the Legislature, the Governor, the State Board of Education, the Superintendent of Public Instruction, the Board of Governors of the California Community Colleges, the Board of Trustees of the California State University, the Regents of the University of California, and the California Postsecondary Education Commission. The master plan shall include, but not be limited to, the following.

(1) Recommendations, as needed, for an organizational and governance structure, or structures, that oversees or coordinates, or both, educational technology activity in and across various educational segments.

(2) Recommendations for funding in support of the appropriate expanded use of technology in education.

(3) Identification of the following:

(A) Critical educational problems, including, but not limited to, the growing number of pupils who drop out of school, increased illiteracy rates, the shortage of teachers competent with the new instructional technologies, and the disparity in educational opportunities for rural and innercity pupils, and the role that technology may play in solving these problems.

(B) Unmet educational, training, and informational needs of schools, universities, government, business, and professional and community organizations, and the role that technology may play in meeting the unmet needs.

(C) The viability of establishing an educational network, or linking existing networks, to provide the state's educational community increased capacity and efficiency in transmitting video, data, and voice signals via telecommunications.

(4) An assessment of the need for and feasibility of establishing comprehensive technology educational programs, with the goals of providing students with skills and knowledge on how to create and operate new technologies.

(5) Recommendations for evaluation and accountability mechanisms for state-funded educational technology programs utilizing, among other data, information provided by the Superintendent of Public Instruction, the State Board of Education, and the Educational Technology Committee in the evaluation process defined in Section 51876.5.

(6) A proposed method for continuously gathering and disseminating current information on all aspects of educational technology to the state's educators.

(7) A proposed strategy to implement the State Master Plan for Educational Technology.

(b) As part of its planning effort, the planning commission shall consult with educators, representatives of associations of technology-using educators, members of the business community, members of the Educational Technology Committee, the Superintendent of Public Instruction, and the State Board of Education. Commission members shall serve without compensation. The commission shall hire an executive director who is knowledgeable about California's educational system, including kindergarten through the postsecondary level. Support for the work of the commission shall be provided through the assistance of the staff at the California Postsecondary Education Commission and the statewide offices of the public colleges and universities.

51873. (a) The Educational Technology Committee is hereby established as a 17-member committee. Each member shall be appointed for a three-year term which shall commence on January 1, 1990, and end on December 31, 1992. The appointments shall be made as follows:

(1) The Governor shall appoint nine members as follows:

(A) One representative from a public teacher preparation program.

(B) One business representative with experience in applications of technology.

(C) One representative from a county office of education.

(D) One representative from instructional television agencies.

(E) One representative from an educational media and library association.

(F) One school district administrator who represents a California school administrators' association.

(G) Two public members.

(H) One certificated practicing elementary school teacher who represents an association of California teachers.

(2) The Superintendent of Public Instruction shall appoint three members as follows.

(A) One principal who is a member of a California school administrators' association.

(B) One certificated practicing secondary school teacher who represents an association of California teachers.

(C) One individual with experience in the use of technology for instructional purposes.

(3) The Senate Rules Committee shall appoint two members as follows:

(A) One individual with experience in the use of technology for instructional purposes

(B) One business representative with experience in applications of technology.

(4) The Speaker of the Assembly shall appoint two members as follows:

(A) One individual with experience in the use of technology for instructional purposes.

(B) One business representative with experience in applications of technology.

(5) The President of the State Board of Education shall appoint one member.

(b) In order to assure a broad variety of business interests on the committee, in making these appointments, the Governor, President pro Tempore of the Senate, and the Speaker of the Assembly shall consult and cooperate so that no single private business entity shall be represented on the committee by more than one member.

(c) The committee shall be responsible for the duties specified in Section 51873.5 to 51879.5, inclusive.

(d) Committee members shall be knowledgeable regarding applications of technology in an educational setting. Every effort shall be made to ensure that the ethnic and racial composition of the committee reflects the racial and ethnic composition of the population of the State of California and that the committee is representative of the cultural and geographic diversity of the state

(e) Educational Technology Committee members shall serve without compensation, except that members shall be reimbursed from educational technology program funds for expenses incurred in the performance of their duties.

(f) The members of the Educational Technology Committee shall be subject to the conflict of interest provisions of the Political Reform Act of 1974, as set forth in Title 9 (commencing with Section 81000) of the Government Code.

51873.5. The duties of the Educational Technology Committee shall include, but not be limited to, the following:

(1) Recommending to the State Board of Education and the Superintendent of Public Instruction priorities for public school kindergarten and grades 1 to 12, inclusive, educational technology funding, targeting identified educational needs.

(2) Advising the State Board of Education and the Superintendent of Public Instruction of continuing developments in information technologies and their application to education for purposes of enhanced learning.

(3) Advising the State Board of Education and the Superintendent of Public Instruction, pursuant to this article, on the allocation of grants for educational software research and development, research and demonstration schools, school-based adoption grants and adaptation grants, research and development grants, grants to postsecondary educational institutions and grants to regional consortia.

(4) Advising the State Board of Education and the Superintendent of Public Instruction on efforts to ensure equal pupil access to educational technology programs, taking into account varied socioeconomic conditions, urban-rural differences, gender, and developments in knowledge of the learning process.

(5) Recommending to the State Board of Education and the Superintendent of Public Instruction an annual budget identifying proposed funding levels for the educational technology program.

(6) Advising the State Board of Education and the Superintendent of Public Instruction on guidelines to promote high quality educational technology instructional material to improve coordinated software research and communications between educational technology developers and distributors, curriculum specialists, teachers, principals, cognitive scientists, and hardware companies.

(7) Advising the State Board of Education and the Superintendent of Public Instruction on devising methods for mobilizing and integrating private sector involvement in public school programs.

(8) Making recommendations to the State Board of Education and the Superintendent of Public Instruction regarding structure, criteria, and objectives for the evaluation of educational technology programs in accordance with evaluation criteria specified in Section 51876.5.

(9) Making recommendations to the State Board of Education and the Superintendent of Public Instruction regarding grant awards to public postsecondary educational institutions for any of the following purposes:

(A) Providing computer education courses as part of an approved teacher preparation program. Teacher preparation programs which provide computer education courses funded pursuant to this section shall, to the extent feasible, be developed in cooperation with regional consortia in order to meet regional teaching training needs.

(B) Conducting studies of computer assisted instruction.

(10) Advising the California Planning Commission for Educational Technology regarding the State Master Plan for Educational Technology.

51873.7. To the extent funds are available, the Educational Technology Committee may recommend that the Superintendent of Public Instruction contract for additional staff services, with program funding not to exceed one-half of 1 percent of the funds appropriated in the annual Budget Act for the educational technology program. Costs incurred through charges by the Department of General Services associated with contracts for the purchase of materials or equipment in accordance with this article shall be payable from Educational Technology Program funds.

51873.9. (a) Under the rules and regulations adopted by the State Board of Education, the Superintendent of Public Instruction shall administer an educational technology local assistance program for the school pupils of California.

(b) The programatic categories for which state funds may be expended under this article shall be determined by the State Board of Education, upon the recommendations of the Educational Technology Committee and the Superintendent of Public Instruction.

(c) The duties of the superintendent shall include, but not be limited to, the following:

(1) Advising the State Board of Education on educational technology plans, policies, programs and activities.

(2) Providing staff to the Educational Technology Committee.

(3) Providing support for the statewide coordination, administration, and evaluation of educational technology programs and resources, among regional groups, institutions of higher education, school districts, businesses, and other agencies.

(d) The following leadership and support activities may be funded under this article:

(1) Using educational technology which includes telecommunications and other new technologies to further statewide educational objectives for staff training, the administration of instructional programs, and testing and evaluation procedures.

(2) Supporting professional development.

(3) Conducting software assessment and determining priorities for the development of educational software required to support

critical educational needs.

(4) Coordinating and implementing the statewide purchase, licensing, and leasing of equipment and courseware as needed.

(5) Identifying effective practices that utilize educational technology.

(6) Procuring, developing, disseminating, and reviewing educational technology programs, including, but not limited to, software, video program, laser disks, compact disks, and other storage media.

(7) Facilitating, through public postsecondary institutions and other appropriate agencies, intensive courses of study for credentialed education personnel in appropriate and effective uses of technology to enhance curriculum, instruction, and school site management.

(e) Costs incurred, in compliance with this article, by the Educational Technology Committee shall be payable from the Educational Technology Program funds.

51874. (a) Local assistance grants may be made under this article to local educational agencies that serve kindergarten and grades 1 to 12, inclusive, for educational technology applications, including, but not limited to, school-based adoption grants and adaptation grants, innovative research and development grants, and grants supporting educational technology research and demonstration schools. Innovative research and development grants, that address educational needs in kindergarten and grades 1 to 12, inclusive, may also be awarded to public institutions of higher education, as deemed appropriate.

(b) The existing evaluation procedures for school-based program quality review and other appropriate local and state evaluation procedures shall be utilized in the assessment of the use, benefits, and impact of educational technology on the educational program.

(c) Grant criteria shall be determined by the State Board of Education, with the advice of the Educational Technology Committee. The State Board of Education shall have final authority in the award of grant funds in accordance with this article.

(d) The application process for the grant programs established pursuant to this article shall be kept as simple as possible to facilitate maximum participation by local educational agencies.

51874.1. (a) Local assistance grants may be made under this article to local educational agencies that serve kindergarten and grades 1 to 12, inclusive, for educational technology applications, including, but not limited to, school-based adoption grants and adaptation grants, innovative research and development grants, and grants supporting educational technology research and demonstration schools. Innovative research and development grants, that address educational needs in kindergarten and grades 1 to 12, inclusive, may also be awarded to public institutions of higher education, as deemed appropriate.

(b) The existing evaluation procedures for school-based program

quality review and other appropriate local and state evaluation procedures shall be utilized in the assessment of the use, benefits, and impact of educational technology on the educational program.

(c) Grant criteria shall be determined by the State Board of Education, with the advice of the Educational Technology Committee. The State Board of Education shall have final authority in the award of grant funds in accordance with this article.

(d) The application process for the grant programs established pursuant to this article shall be kept as simple as possible to facilitate maximum participation by local educational agencies.

51874.2. Local assistance grants shall require the development of a technology use plan. Technology use plans shall include the following:

(a) Assurance that local technology use plans are consistent with district level planning for educational technology. Development, implementation, and evaluation of Educational Technology Local Assistance grants shall utilize and, where possible, be part of existing local planning procedures to include school improvement plans, school development plans, and other established state and federally mandated planning procedures.

(b) Involvement of school site councils and other appropriate schoolwide advisory groups, to include site administrators, teachers, support personnel, and parents.

(c) A description of all resources to be committed to support the costs of employing technology in instructional programs, including the acquisition of required software and hardware, the maintenance and replacement of equipment, and the education of teachers and school personnel in its use.

(d) All local technology use plans shall include a staff development component. Not less than 10 percent of total local grant funds received by a local educational agency shall be utilized for staff development activities. Criteria for screening grant applications for educational technology local assistance program funds shall include an assessment of the extent to which staff development is needed for successful implementation of project activities. Technology use plans shall document how staff development services are to be provided through local or regional staff development resources.

51874.4. The Farr-Morgan-Quackenbush Education Technology Act of 1989 shall support the following local assistance programs.

(a) School-based adoption grants and adaptation grants as described in Section 51874.6.

(b) Research and development grants as described in Section 51874.8.

(c) Grants supporting educational technology research and demonstration schools as described in Section 51875.

51874.6. (a) School-based adoption and adaptation grants shall be provided under this article for local educational agencies to adopt or adapt technological applications to support the instructional program. These grants may be used to implement or expand on

existing exemplary programs and practices to meet locally documented educational needs.

(b) Funding shall be provided on a per project basis with consideration given to pupil enrollment at the applicant schoolsite in order to provide funding equity. These grants shall be based on a 20 percent local match requirement. Of the 20 percent local share, up to one-half may be provided from in-kind contributions, and the remainder from local funds. The Educational Technology Committee shall make recommendations to the State Board of Education to establish a minimum funding level for small schools, adjusted annually for inflation.

(c) Local planning criteria shall be developed by the Superintendent of Public Instruction, with the advice of the Educational Technology Committee and shall be submitted for final approval, modification, or rejection by the State Board of Education. These criteria shall be consistent with the general local planning criteria established under Section 51874.2. Local educational agencies shall be encouraged to use grant funds under this section to implement or expand existing exemplary programs and practices to meet locally documented needs. Project development shall be coordinated with school improvement programs school development plans, and school and district level educational plans.

(d) All local educational agencies shall be provided with equal access to the information and assistance needed to apply for grant funds.

(e) In developing state criteria for awarding funds under this section, efforts shall be made to address pupils with special educational needs, although not exclusively, and to test the relative effects of varieties of intensive targeted uses of technology to enhance learning. Grants in this category may be funded for one year only, and shall be evaluated in accordance with the evaluation criteria developed by the State Board of Education under Section 51875.

(f) The State Board of Education, upon the recommendation of the Educational Technology Committee, may authorize a grant award under this section to a local educational agency for the adoption or adaptation of a successful educational project or practice, if the grant application includes the following:

(1) Provides evidence that the proposed project is closely integrated into the existing school improvement or school development planning, and that teachers and administrators at the schoolsite are committed to implementation of the proposed project.

(2) Provides for the coordination and articulation of the project with existing programs.

(3) Provides sufficient information to establish whether the effort is designed to adopt or adapt an existing successful program, or is a new locally developed adaptation of educational technology.

(4) Contains a method of evaluating resulting changes in teaching and pupil academic performance or other appropriate pupil skills.

51874.8. (a) There is a need to identify the benefits and effects of technology on learning.

(b) Innovative research and development grants shall be provided for the following purposes:

(1) Support of innovation at local and regional levels through research and development of educational technologies to solve educational problems and special needs as defined annually by the Educational Technology Committee and the Superintendent of Public Instruction.

(2) Exploration and evaluation of new and emerging technologies for instructional uses, including, but not necessarily limited to, telecommunications, videodisc technology, and robotics.

(c) Collaboration among institutions of higher education, regional consortia, and industry shall be particularly encouraged for the purpose of identifying the benefits and effects of technology on learning.

(d) Each research and development project budget shall include a research design approved by the Educational Technology Committee, and an objective evaluation of the impact and educational benefits related to the cost for development of the project.

(e) General criteria for awarding funds supporting these projects shall be based on evidence that the project includes all of the following:

(1) A cost-effective solution to a current or statewide educational need in public elementary or secondary schools.

(2) A demonstration that teachers and experts in the subject matter of the proposal have collaborated in the development of the project.

(3) A professional development component that maximizes teacher and administrator commitment and integration of the project into the existing instructional program.

(4) An objective method of evaluating resulting changes in teaching, pupil performance, and the instructional program, as appropriate.

(f) An applicant local educational agency shall be eligible for a research and development matching grant that provides four dollars ($4) of state funding for every one dollar ($1) provided by the agency. Research and development funding provided pursuant to this section shall be provided on a per project basis, based upon the documented costs of conducting each project. Research and development projects shall be funded for up to three years for development and validation.

(g) The Educational Technology Committee may make recommendations to the State Board of Education granting continuation of funding beyond three years for dissemination purposes if the project meets the following criteria:

(1) The project contains a plan for statewide dissemination of the program to be coordinated with the State Department of Education,

regional consortia, and other relevant educational program dissemination agencies.

(2) The project may be replicated by a local educational agency in a cost-effective manner.

51875. (a) In 1987 five model technology schools were established by the educational technology local assistance program. In 1988, a sixth model technology school was added. The existing six model schools, hereafter referred to as educational technology research and demonstration schools, shall continue to be funded under the provisions of the Educational Technology Act of 1989, as created by this statute.

(b) Grants supporting educational technology research and demonstration schools shall be provided under this article to fund the creation and continuation of technology demonstration schools and programs. Funding under this section shall be provided on a per project basis, based upon the documented costs of operating each research and demonstration school over the period of time designated by the State Board of Education.

(c) The Educational Technology Committee shall make recommendations to the State Board of Education regarding funding for these local educational agencies for the following purposes:

(1) Developing cost-effective strategies for meeting California's educational goals through the use of technology, including projects designed to determine the instructional value and cost effectiveness of applications of instructional technology from kindergarten to grade 12, inclusive.

(2) Establishing demonstration vehicles for developing partnerships, conducting research, and disseminating successful methods for use of technology in an educational environment to enhance learning.

(3) Demonstrating the effectiveness of technology to enhance the delivery of instruction while identifying the benefits of technology for the administration of school and district level operations.

51876. (a) Each research and demonstration school, in addition to any other funding purposes designated under this section, shall study, on an ongoing basis, the current and potential impact of educational technology on pupil academic achievement within the educational process. The resulting data shall be reported to the Governor, the Legislature, the State Board of Education, the Superintendent of Public Instruction, and the Educational Technology Committee.

(b) The Educational Technology Committee shall recommend strategies to the State Board of Education and the Superintendent of Public Instruction for statewide dissemination of information resulting from educational technology research and demonstration schools in order to facilitate replication. Educational technology research and demonstration schools, in concert with the regional resource consortia or other regional educational services agencies, shall establish a systematic plan to assist other local educational

agencies in the state to improve their educational programs through the adoption or adaption of educational technology interventions, programs, and practices. State and regional agencies, in cooperation with the technology industry, shall be encouraged to cooperate with these demonstration schools to publicize successful practices.

(c) Grants for educational technology research and demonstration schools shall be awarded on the basis of ten dollars ($10) of state funding for every one dollar ($1) provided by the local educational agency.

51876.5. Annual evaluation of the school-based adoption grants, research and development grants, and grants supporting educational technology research and demonstration schools can serve as a useful tool for self-assessment, program improvements, and state level accountability and planning.

(b) For each year for which any project is funded under an educational technology matching grant pursuant to Section 51874.6, 51874.8, or 51875, the grant recipient shall submit to the State Board of Education a report based on the evaluation goals for educational technology programs established under this article. Those goals shall include the following:

(1) For educational technology research and development projects and research and demonstration schools, the assessment of subject matter mastery and enhancement of cognitive thinking skills as a result of technology-assisted instruction, as appropriate.

(2) For other matching grant programs, the documentation of the nature and extent of classroom applications of technologies as an instructional tool, and the identification of factors that may restrict the most effective use of educational technology.

(3) In all grant categories funded in accordance with this article, evaluation criteria shall include an assessment of the extent to which staff development resources are made available by the grant recipient, and the effectiveness of those resources to facilitate successful project implementation.

(c) The Superintendent of Public Instruction, with the advice of the Educational Technology Committee, shall develop evaluation criteria for recommendation to the State Board of Education. Evaluation criteria shall be developed to be consistent with program quality review criteria and procedures established for school improvement programs.

(d) The Superintendent of Public Instruction shall annually evaluate a sample of projects supported by school-based adoption and adaptation grants, in order to identify those uses of project funds which are most cost-effective.

(e) The Educational Technology Committee shall recommend to the State Board of Education and the Superintendent of Public Instruction a process for an independent evaluation of all program components. The evaluation, funded with program funds, shall include procedures to standardize evaluation data collection, and strategies for the effective utilization of evaluation information to

develop policy for use of educational technology.

(f) The evaluations specified in this section shall contain methodologies and objectives which (1) emphasize educational outcomes, (2) are based on recommendations of the Educational Technology Committee, and (3) to the extent practicable, are consistent across projects, in order to identify effective programs and practices. Evaluation results shall be widely disseminated to local educational agencies, with particular emphasis on those projects judged most successful and adaptable by other educational agencies.

51877. The Farr-Morgan-Quackenbush Educational Technology Act of 1989 shall support the following regional assistance programs:

(a) Instructional television agencies as described in Section 51877.5.

(b) The California Technology Project or a similar regional resource consortia as described in Section 51878.

51877.5. (a) A network of instructional television agencies shall be established on a regional basis so that instructional television services shall be available to every public school in California.

(b) The services provided by each instructional television regional agency shall include, but not be limited to, all of the following:

(1) The delivery of instructional television programming using as many appropriate and cost-effective existing means in the region as are feasible, including, but not limited to, network broadcast, cablecast, telco fiber, closed circuit or microwave, satellite, and video cassette.

(2) Making recommendations to the Educational Technology Committee and the Superintendent of Public Instruction regarding the acquisition of licenses permitting the most flexible uses of instructional video programming by teachers and pupils.

(3) The distribution of broadcast schedules, teacher guides, curriculum guides, and other information needed to promote the effective use of instructional television by teachers and pupils.

(4) Collaboration with, and assistance to, regional consortia and local educational agencies to enhance the awareness of the skills of teachers and administrators regarding the use of instructional video media.

(5) The management of data gathering and evaluation to measure both the use and impact of the services provided.

(c) The network shall be comprised of instructional television regional agencies which may include public broadcasting agencies affiliated with the Public Broadcasting System, regional consortia, local educational agencies, or a combination of any of those organizations. The network shall be organized in a manner that results in the cost-effective provision of services to public schools within each region.

(d) Instructional television regional agencies may receive grant awards to provide instructional television services for member local educational agencies. The State Board of Education, with the advice

of the Educational Technology Committee, shall determine the annual amount of grants for instructional television regional agencies by establishing a per pupil or per project funding amount.

(e) Although services may be provided under this section on a cross-regional basis, no school district may be included in more than one region for the purpose of determining grant awards for each instructional television regional agency.

51878. (a) The Legislature hereby finds and declares all of the following:

(1) It is the intent of the Legislature that this section provide for the support and evaluation of a statewide network of regional consortia as a local resource for educational technology programs.

(2) In January 1989, a pilot network involving regional agencies and consortia, the California Technology Project, was established as an initiative of the Educational Technology Local Assistance Program.

(3) The California Technology Project has been established primarily to assist local educational agencies in planning, implementing, and evaluating educational technology programs and projects pursuant to this article.

(b) Educational Technology Program funds may be used to support the California Technology Project or other similar projects, as determined by the State Board of Education, with the advice of the Educational Technology Committee and the Superintendent of Public Instruction.

(c) The California Technology Project shall be subject to a comprehensive evaluation, as provided in accordance with criteria established in Section 51875. This evaluation shall assess the degree to which this pilot project effectively provides regional assistance to local educational agencies in the implementation of educational technology programs. This evaluation shall also include an assessment of the quality and impact of technology-related regional staff development services. Prior to March 1, 1990, there shall be a report of the findings of the evaluation, including recommendations for modification or continuation of the regional resource consortia project. This report shall be provided to the State Board of Education.

(d) The California Technology Project, or a similar regional resource consortia, shall do the following:

(1) Serve as a collaborative agency to link and coordinate the educational technology resources of institutions of higher education and other educational agencies and organizations, including, but not limited to, local educational agencies and instructional television regional agencies, and business and industry, to serve public education in kindergarten and grades 1 to 12, inclusive.

(2) Identify school and district needs for regional educational technology support across California.

(3) Identify and train educators to provide regional and local assistance for the planning, implementation, and evaluation of

educational technology programs and practices.

(4) Identify and disseminate information about effective educational technology resources, including, but not limited to, effective professional development programs, successful educational technology programs and practices, and other resources determined to be necessary for the local implementation of educational technology programs.

(5) Facilitate and assist in the identification and dissemination of information about high quality instructional technology programs including computer and video programs, laserdiscs, and other media, which support California's curriculum frameworks.

(6) Facilitate the establishment and coordination of regional resource consortia as well as the expansion of existing consortia to assist schoolsites and districts to plan and implement educational technology programs and practices.

51878.5. Pursuant to Section 16370 of the Government Code, there is hereby authorized in the State Treasury a Special Deposit Fund Account, which shall consist of moneys collected from the sale of educational computer software to local educational agencies under this article. All of the moneys collected are hereby continuously appropriated for the support of the State Department of Education to be used for the purchase and reproduction of new educational technology materials, as well as for the development of those materials, if that development is necessary to meet critical education needs.

51879. It is the intent of the Legislature that this article shall be funded through the annual Budget Act. Funding for future years shall be funded through the budget process.

51879.5. This article shall remain in effect only until December 31, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before December 31, 1992, deletes or extends that date.

SEC. 4. The sum of fifteen thousand dollars ($15,000) is hereby reappropriated from Item 6110-001-001 of Section 2.00 of the Budget Act of 1989 (Chapter 93, Statutes of 1989) to the California Postsecondary Education Commission for deposit in the California Planning Commission for Educational Technology Account which is hereby created to support the expenses of the executive director and the commission members appointed pursuant to Section 51872 of the Education Code when they are required to meet and to travel in connection with their commission duties. These funds, along with other sums received from private donations to provide compensation for the executive director of the California Planning Commission for Educational Technology, are continuously appropriated for the purposes specified in Section 51872.5 of the Education Code but may only be expended for public school purposes.

SEC. 5. In the event that the sum of fifty thousand dollars ($50,000) is not received for deposit in the California Planning

Commission for Educational Account from private donations, the state shall have no obligation to fund the salary of the executive director of the California Planning Commission for Educational Technology as provided for in subdivision (b) of Section 51872.5 of the Education Code.

CHAPTER 1335

An act to add Chapter 13.7 (commencing with Section 26295) and Chapter 13.8 (commencing with Section 26299.000) to Part 2 of Division 2 of Title 3 of, and to add Section 53721.6 to, the Government Code, and to add Sections 7252.15 and 7252.30 to the Revenue and Taxation Code, relating to county justice facilities.

[Became law without Governor's signature. Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Chapter 13.7 (commencing with Section 26295) is added to Part 2 of Division 2 of Title 3 of the Government Code, to read:

CHAPTER 13.7. ORANGE COUNTY REGIONAL JUSTICE FACILITIES ACT

Article 1. General Provisions, Findings, and Definitions

26295. This chapter shall be known and may be cited as the Orange County Regional Justice Facilities Act.

26295.2. The Legislature hereby finds and declares that the existing state of overcrowding in jails and court facilities in Orange County is so great as to significantly impede the administration of justice and create a situation wherein persons who are a danger to society are required to be released into that society for lack of adequate facilities to house them. The Legislature further finds and declares that it is in the public interest to create the Orange County Regional Justice Facilities Commission so that regional justice facility needs may be addressed in an expeditious and appropriate fashion on a countywide basis. The Legislature further finds and declares that it is in the public interest to allow the voters to approve a general tax for the general governmental purposes of the Orange County Regional Justice Facilities Commission.

26295.4. As used in this chapter, "commission" means the Orange County Regional Justice Facilities Commission created pursuant to Article 2 (commencing with Section 26296).

26295.6. As used in this chapter, "bonds" means indebtedness and securities of any kind or class, including bonds, notes, bond

anticipation notes, and commercial paper.

26295.8. As used in this chapter, "county" means the County of Orange.

26295 10. As used in this chapter, "board of supervisors" means the Board of Supervisors of the County of Orange.

26295.12. As used in this chapter, "master plan" means the plan for construction, furnishing, acquisition, maintenance, and operation of adult and juvenile detention facilities and courthouse facilities, and structures necessary or convenient to those facilities. The master plan shall be developed and approved, and may be amended from time to time, by the commission. Subject to the limitations on the commission's powers, as set forth in subdivision (c) of Section 26296.14, the master plan may include, but is not limited to, all of the following:

(a) The adult detention facilities to be constructed, furnished, acquired, maintained or operated throughout the county.

(b) The juvenile detention facilities to be constructed, furnished, acquired, maintained, or operated throughout the county.

(c) The courthouse facilities to be constructed, furnished, acquired, maintained, or operated throughout the county.

(d) The time schedule according to which the facilities referenced in subdivisions (a), (b), and (c) shall be constructed, furnished, or acquired.

(e) Projections of revenues, including revenues expected to be derived from the tax provided for in this chapter, together with other federal, state, and local funds, and funds from the sale of bonds under this chapter, and expenditures for capital, maintenance, and operations purposes for adult and juvenile detention facilities and courthouse facilities purposes.

(f) Those other requirements as the commission, in carrying out its responsibility for the provision of detention and court facilities and services, deems necessary and appropriate.

26295.14. As used in this chapter, "outstanding," when used as of any particular time with reference to bonds issued by the commission, means all bonds theretofore and thereupon being authenticated and delivered by an authenticating agent duly appointed by the commission or its authorized designee except:

(a) Bonds theretofore canceled by an authenticating agent or surrendered to such authenticating agent for cancellation.

(b) Bonds that are owned or held by or for the account of the commission or any other obligor on the bonds, or any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the commission or any other obligor on the bonds.

(c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other bonds shall have been authenticated and delivered.

(d) Refunding bonds issued pursuant to Section 26298.42, except to the extent that the principal amount of the refunding bonds

exceeds the principal amount of the bonds to be refunded with the proceeds of such refunding bonds.

Article 2. Creation of the Commission, Powers and Duties, Membership

26296. There is hereby created the Orange County Regional Justice Facilities Commission in the county.

26296.2. (a) The commission shall be comprised of five members, as follows:

(1) Two members of the board of supervisors who shall be appointed by, and serve at the pleasure of, the board of supervisors.

(2) One member of the city council of a city in the county, who shall be appointed by, and serve at the pleasure of, the county city selection committee created pursuant to Article 11 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1 of Title 5.

(3) One member of the city council of a city in the county, other than the city specified in paragraph (2), who shall be appointed by, and serve at the pleasure of, the county city selection committee specified in paragraph (2).

(4) One citizen, who shall be appointed by a majority vote of the other four members of the commission.

(b) Each member of the board of directors may appoint an alternate member to the commission, to represent, including, without limitation, to appear for and vote on behalf of, that member.

(c) (1) Except as provided in paragraph (2), all members of the commission shall be appointed for terms of four years and until their successors are appointed and qualified.

(2) For the initial members of the commission, two shall serve for terms of two years, two shall serve for terms of three years, and one shall serve for a term of four years. The respective terms of each of the initial members shall be determined by the members of the commission by lot. Thereafter, persons appointed as members of the commission shall be appointed for terms of four years.

(3) The term of any member serving on the commission as a result of holding another public office shall terminate when that member ceases holding the other public office and a new member has been properly seated. The new member of the commission shall hold office for the remainder of the term of the member who was replaced by the new member.

(4) Vacancies occurring shall be filled by the appointing authority for the unexpired term.

26296.4. The commission at its first meeting, and thereafter annually at the first meeting held on a date as the commission may determine, shall elect a chairperson from its members, who shall preside at all meetings, and a vice chairperson, who shall preside in the chairperson's absence. In the event of the absence or inability to act of both the chairperson and vice chairperson, 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 of the authority of the chairperson.

26296.6. The commission shall establish rules for its proceedings consistent with the law of the State of California.

26296.8. A majority of the members of the commission shall constitute a quorum for the transaction of business, and all official acts of the commission shall require the affirmative vote of a majority of its members constituting a quorum.

26296.10. The acts of the commission shall be expressed by motion, resolution, or ordinance.

26296.12. All meetings of the commission shall be conducted in the manner prescribed by the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5.

26296.14. (a) The commission shall do all of the following:

(1) Adopt an annual budget.

(2) Cause a postaudit of the financial transactions and records of the commission to be made at least annually by a certified public accountant.

(b) The commission may do all of the following:

(1) Adopt an administrative code, by ordinance, which shall prescribe the powers and duties of commission officers, the method of appointment of commission employees, and methods, procedures, and systems of operation and management of the commission.

(2) Do any and all things necessary to carry out the purposes of this chapter.

(c) Notwithstanding subdivision (a) or (b), the commission shall have no power to determine the geographic locations at which any of the detention or court facilities specified in this chapter shall be sited or the design or construction standards which shall apply to those detention or court facilities.

26296.16. Notice of time and place of the public hearing for the adoption of the annual budget shall be published one time in a newspaper of general circulation not later than the 15th day prior to the date of the hearing. The proposed annual budget shall be available for public inspection at least 15 days prior to the hearing.

26296.18. The commission shall appoint an executive director who shall act for the commission under its direction. The commission may appoint other officers as it deems necessary to carry out its duties and functions.

26296.20. Members of the commission may be compensated at a rate not exceeding one hundred dollars ($100) for any day attending to the business of the commission, but not to exceed four hundred dollars ($400) in any month, and may be reimbursed for necessary travel and other expenses incurred in the performance of their duties, as authorized by the commission.

26296.22. (a) Except as otherwise provided in subdivisions (b) and (c), the commission shall enter into a contract with the Board of Administration of the Public Employees' Retirement System, and the board shall enter into such a contract, to include all of the

employees of the commission in that retirement system, and the employees shall be entitled to substantially similar health benefits as are state employees pursuant to Part 5 (commencing with Section 22751) of Division 5 of Title 2.

(b) For purposes of providing retirement benefits, the commission may contract with the retirement system of which the employees of the county are members, in lieu of contracting with the board.

(c) Notwithstanding subdivision (a) or (b), to the extent that the commission contracts with the county or other agencies to utilize employees of the county or other agencies as employees of the commission, the commission need not establish any retirement benefits program for those employees.

26296.24. The commission has perpetual succession and may adopt a seal and alter it at its pleasure.

26296.26. The commission may sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

26296.28. All claims for money or damages against the commission are governed by Division 3.6 (commencing with Section 810) of Title 1, except as provided therein, or by other statutes or regulations expressly applicable thereto.

26296 30. The commission may make contracts and enter into stipulations of any nature whatsoever, including, but not limited to, contracts and stipulations to indemnify and save harmless, to employ labor, and to do all acts necessary and convenient for the full exercise of the powers granted in this chapter. The commission may contract with any department or agency of the United States of America, with any public agency, or with any person upon terms and conditions as the commission finds is in its best interest including, but not limited to, contracts for alcohol detoxification diversion programs. The commission may employ attorneys and consultants necessary and convenient to carrying out its purposes and powers.

26296.34. The purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars ($25,000), shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 10 days before the date for the receipt of the bids. The commission, at its discretion, may reject any and all bids and readvertise.

26296.36. If, after rejecting bids received under Section 26296.34 the commission determines and declares, by a two-thirds vote of all of its members, that the supplies, equipment, or materials may be purchased at a lower price in the open market, the commission may proceed to purchase those supplies, equipment, or materials in the open market without further observance of the provisions of this article regarding contracts, bids, advertisement, or notice.

26296.38. Notwithstanding Section 26296.34, the commission may

direct the purchase of any supply, equipment, or material without observance of any provision in this article regarding contracts, bids, advertisement, or notice upon a finding by two-thirds of all members of the commission that there is only a single source of procurement therefor and that the purchase is for the sole purpose of duplicating or replacing supply, equipment, or material already in use.

Article 3. Detention and Courthouse Facilities

26297. For purposes of allocating revenues pursuant to Section 26298.18, the commission shall coordinate the construction, furnishing, acquisition, maintenance, and operation of all adult and juvenile detention facilities and courthouse facilities within the county pursuant to the master plan.

26297.1. (a) The master plan shall be developed and approved by the commission. The master plan may be approved before or after the adoption of the retail transactions and use tax ordinance specified in Article 4 (commencing with Section 26298).

(b) Incident to the development of the master plan, the commission shall solicit proposals for adult and juvenile detention facilities and courthouse facilities purposes from the county and the cities in the county. The commission shall adopt a procedure for evaluating these proposals in consultation with the county and the cities in the county. However, nothing in this subdivision shall require the commission to include any of these proposals into the master plan.

(c) The master plan may be amended from time to time by the commission, in its sole discretion.

Article 4. Transactions and Use Taxes in the County of Orange

26298. The Legislature, by the enactment of this article, intends the additional funds provided by this article to supplement existing local revenues being used for the development of adult and juvenile detention facilities and courthouse facilities within the county. The county and the cities therein are further encouraged to maintain their existing commitment of local funds for adult and juvenile detention facilities and courthouse facilities purposes.

26298.2. A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the county may be adopted by the commission in accordance with Section 26298.8 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 commission and if a majority of the electors voting on the measure vote to approve its imposition at an election. This election may be a special election called for that purpose by the commission or, if the commission so determines, shall be consolidated with a regular election.

26298.4. The ordinance shall state the nature of the tax to be

imposed, the tax rate, the purposes for which the revenue derived from the tax will be used, and the term during which the tax shall be imposed. The proposition shall include an appropriations limit for the agency pursuant to Section 4 of Article XIII B of the California Constitution.

26298.6. (a) The county shall conduct the election, as called by the commission, regarding the imposition of a retail transactions and use tax ordinance. The commission shall reimburse the county for its cost in conducting that portion of the regular election directly related to the commission measure or in conducting the special election, as applicable.

(b) Any special election shall be called and conducted in the same manner as provided by law for the conduct of special elections by a county.

26298.8. The commission, subject to the approval of the voters, may impose a tax rate of one-half of 1 percent under this chapter and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. Neither this chapter nor the ordinance shall affect any tax otherwise authorized.

26298.10. (a) The actual wording of the proposition on any short form of ballot card, label, or other device, regardless of the system of voting used, shall read as follows:

"ADULT AND JUVENILE DETENTION FACILITIES AND COURTHOUSE FACILITIES—ORANGE COUNTY REGIONAL JUSTICE FACILITIES COMMISSION To construct, furnish, acquire, maintain, and operate adult and juvenile detention facilities and courthouse facilities in the county, this proposition authorizes the Orange County Regional Justice Facilities Commission to adopt a one-half of 1 percent sales tax solely for adult and juvenile detention facilities and courthouse facilities purposes." In approving this proposition the voters are also approving an appropriations limit for the Orange County Regional Justice Facilities Commission.	YES	
	NO	

(b) The sample ballot to be mailed to the voters, under Section 10010 of the Elections Code, shall be the full proposition as set forth in the ordinance calling for the measure to be voted upon at an election.

26298.12. (a) The commission may, as part of the same ballot proposition to approve the imposition of a retail transactions and use tax, seek authorization to issue bonds payable solely from the proceeds of the retail transactions and use tax.

(b) The actual wording of the proposition on any short form of ballot card, label, or other device, regardless of the system of voting used, shall read as follows:

"ADULT AND JUVENILE DETENTION FACILITIES AND COURTHOUSE FACILITIES—ORANGE COUNTY REGIONAL JUSTICE FACILITIES COMMISSION To construct, furnish, acquire, maintain, and operate adult and juvenile detention facilities and courthouse facilities in the county, this proposition authorizes the Orange County Regional Justice Facilities Commission to adopt a one-half of 1 percent sales tax solely for adult and juvenile detention facilities and courthouse facilities purposes and/or to issue bonds payable from the proceeds of that sales tax." In approving this proposition the voters are also approving an appropritions limit for the Orange County Regional Justice Facilities Commission.	YES NO	

(c) The sample ballot to be mailed to the voters, under Section 10010 of the Elections Code, shall be the full proposition as set forth in the ordinance calling for the measure to be voted upon at an election.

26298.16. (a) Any transactions and use tax ordinance adopted pursuant to this article shall become operative as provided in Section 7265 of the Revenue and Taxation Code.

(b) Prior to the operative date of the ordinance, the commission shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of the ordinance.

26298.17. The combined rate of any transactions and use tax imposed pursuant to this chapter and all other transactions and use taxes imposed pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of the Revenue and Taxation Code) or any other provision of law 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.

26298.18. The revenues from the taxes imposed pursuant to this article may be allocated by the commission for the following purposes:

(a) To administer this chapter.

(b) To pay the costs of the financing, construction, acquisition, furnishing, maintenance, and operation of adult and juvenile detention facilities, courthouse facilities, and structures necessary or convenient thereto, in compliance with the master plan and

pursuant to allocation or funding agreements described in Section 26298.20.

(c) To pay the costs of the financing and acquisition of necessary lands, easements, and rights-of-way at sites designated or approved by the commission, including any costs incurred by the commission in acquiring the lands, easements, and rights-of-way.

(d) To hold title as necessary to land or facilities.

(e) To retire all or a portion of any capital debt previously incurred for any adult or juvenile detention facilities or courthouse facilities which exists on the date the election is held for voter approval of the retail transactions and use tax ordinance authorized by this chapter.

(f) To pay all debt service and any other related costs and expenses of any bonds issued under this chapter.

26298.20. (a) The commission shall establish a procedure for reviewing and evaluating requests by the county and the cities in the county for revenues of the commission to be used for the adult and juvenile detention facilities and courthouse facilities purposes specified in Section 26298.18, and shall review and evaluate, from time to time, those requests. After approving such a request of the county or any city in the county, the commission may allocate to the county or city any lawfully available moneys of the commission, including, but not limited to, the revenues from the taxes imposed pursuant to this article and the proceeds of any limited tax bonds authorized by the voters pursuant to Section 26298.12, in amounts as the commission shall determine, to fund, in whole or in part, those detention or courthouse facilities purposes.

(b) In connection with any allocation of moneys to the county or any city in the county pursuant to subdivision (a), the commission shall enter into an allocation or funding agreement with the county or city pursuant to which the commission shall commit the moneys allocated under subdivision (a) to the county or city. The moneys shall be used solely for the purposes approved by the commission under subdivision (a). Each allocation or funding agreement shall contain terms and conditions as the commission shall determine and may provide, without limitation, the purpose or purposes for which the allocation may be used, that the amount to be allocated may be advanced by the commission in a lump sum or in a series of payments at a date or dates determined by the commission, which may be in one or more fiscal years of the commission, that the allocation will be in the form of a conditional or unconditional grant or contribution or as a loan or other advance against an obligation of the county or city to repay the same, and the terms and conditions relating the obligation to repay the same, including the interest rate to be paid and the date or dates that payments are to be made to the commission on account of that obligation.

26298.22. (a) No modification, amendment, or rescission of any allocation or funding agreement between the commission and the county shall become effective unless the board of supervisors, by

resolution, first approves the modification, amendment, or rescission.

(b) No modification, amendment, or rescission of any allocation or funding agreement between the commission and any city within the county shall become effective unless the city council of the city, by resolution, first approves the modification, amendment, or rescission.

26298.24. When adopting its annual budget pursuant to Section 26296.14, the commission shall provide that the lawfully available moneys of the commission shall be used first for the payment of debt service on all outstanding limited tax bonds of the commission (unless otherwise provided in the resolution providing for the issuance of such bonds) and (unless otherwise provided in an allocation or funding agreement) for the payment of all allocations required to be made pursuant to allocation or funding agreements between the commission and the county or any city in the county prior to the payment of operating costs and expenses and any other lawful costs and expenses of the commission.

26298.28. If a retail transactions and use tax is adopted pursuant to this article, the commission shall prepare and submit a report to the board of supervisors and to the city council of each city in the county on or before January 1 of the year following the end of the first full fiscal year after that date that the taxes are imposed pursuant to this article and annually thereafter. The report shall evaluate, and report the progress made in, the implementation of the master plan in the preceding fiscal year.

26298.30. (a) The bonds authorized by the voters concurrently with the approval of the retail transactions and use tax may be issued by the commission at any time, and from time to time, payable solely from the proceeds of the tax. The bonds shall be referred to as "limited tax bonds."

(b) Limited tax bonds may not be issued unless the estimated proceeds of the retail transactions and use tax for a period of 30 years after issuance of the bonds shall at least equal the aggregate principal and interest payable with respect to all limited tax bonds then outstanding plus the limited tax bonds proposed to be issued. For purposes of determining the principal amount of limited tax bonds outstanding, limited tax bonds shall be assumed to be paid at par either at their respective maturities or pursuant to mandatory sinking fund installments with respect thereto. For purposes of determining the aggregate interest payable with respect to any issue of limited tax bonds, bonds that bear interest at variable interest rates shall be assumed to bear interest for the terms thereof equal to the interest rate in effect on the date the bonds are issued or, in the case of limited tax bonds already outstanding, equal to the interest rate in effect on the date that the determination is made. For purposes of determining the estimated proceeds of the retail transactions and use tax for a period of 30 years, a finding made by the commission, incidental to any prospective issuance of bonds, regarding the amount of the estimated proceeds shall be binding and conclusive for all purposes.

(c) The pledge of retail transactions and use taxes to the limited tax bonds authorized under this article shall have priority over the use of any of the funds for "pay-as-you-go" financing except to the extent that priority is expressly restricted in the resolution providing for the issuance of the bonds.

26298.32. (a) Limited tax bonds shall be issued pursuant to a resolution adopted at any time, and from time to time, by the commission by a two-thirds vote of all members of the commission. Each resolution shall provide for the issuance of bonds in amounts as the necessity therefor may appear, until the full amount of the bonds authorized shall 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.

(b) A resolution providing for 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 the 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 exceed 31 years from the date thereof or the date of each series thereof.

(5) The maximum rate of interest to be paid, which shall not exceed the maximum interest rate specified from time to time in Section 53531 of the Government Code, without regard to any other limitation.

(6) The denomination or denominations of the bonds, which shall not be less than five thousand dollars ($5,000).

(7) A pledge of retail transactions and use taxes to the limited tax bonds, either before or after giving effect to the payment of maintenance and operations expenses as defined by the commission in the resolution, and a statement that the bonds shall have priority over the use of any of the funds for "pay-as-you-go" financing except to the extent that the priority is expressly restricted in the resolution. However, the resolution shall not provide for the pledge of retail transactions and use taxes that have been allocated to the county or any city therein pursuant to Section 26298.20, except to the extent that the proceeds of any limited tax bonds are to be so allocated in lieu of those retail transactions and use taxes.

(8) 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 the whole or any part of the principal shall become due and payable.

(c) The resolution may also contain any other matters authorized by this article or any other law.

26298.34. (a) The commission may provide for the bonds to bear interest at a variable or fixed interest rate, for the manner and intervals, in which the rate shall vary, and for the dates on which the interest shall be payable.

(b) In the resolution or resolutions providing for the issuance of the bonds, the commission may also provide for call and redemption of the bonds prior to maturity at times and prices and upon other terms as it may specify. However, no bond shall be 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 thereon.

(c) 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 county or at such other place or places as may be designated, or at either place or places at the option of the holders of the bonds.

(d) The bonds, or each series thereof, shall be dated and numbered consecutively and shall be signed by the chairperson or vice chairperson of the commission and the treasurer, or other officer of the commission performing the duties of a treasurer, of the commission, and the official seal of the commission shall be attached thereto The interest coupons, if any, of the bonds shall be signed by the treasurer, or other officer performing the duties of a treasurer, of the commission All of the signatures and seal may be printed, lithographed, or mechanically reproduced. However, the bonds shall be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the commission or its authorized designee. If any officer whose signature appears on bonds or coupons ceases to be such an officer before the delivery of the bonds, the officer's signature is as effective as if the officer had remained in office

26298.36. The bonds may be sold as the commission determines by resolution. The commission may sell the bonds at a price below par, but the discount on any bonds so sold shall not exceed 5 percent of the par value thereof.

26298.38. Delivery of any bonds issued pursuant to this chapter may be made at any place either inside or outside the state, and the purchase price may be received in cash or bank credits.

26298.40. All accrued interest and premiums received on the sale of bonds shall be placed in the fund to be used for the payment of principal of and interest on the bonds and the remainder of the proceeds of the bonds shall be placed in the treasury of the commission and applied to secure the bonds or for the purposes for which the debt was incurred. However, when those purposes have been accomplished, any moneys 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 outstanding bonds of the commission from time to time in the open market at those prices and in that manner, either at public or private sale or otherwise, as the commission may determine. Bonds so purchased shall be canceled immediately.

26298.42. (a) The commission may provide for the issuance, sale, or exchange of refunding bonds to redeem or retire any bonds issued by the commission upon the terms, at the times and in the manner which it determines.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the commission, be applied to the purchase or retirement at maturity or redemption of outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or retirement at the maturity thereof and may, pending that application, be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date as may be determined by the commission.

(c) Pending that use, the escrowed proceeds may be invested and reinvested by the commission or its trustee in obligations of, or guaranteed by, the United States of America, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States of America, maturing at a time or times appropriate to ensure the prompt payment of principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on the investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment thereof may be returned to the commission for use by it in any lawful manner.

(d) The provisions of this article for the issuance and sale of bonds apply to the issuance and sale of refunding bonds.

26298.44. (a) The commission may borrow money in anticipation of the sale of bonds which have been authorized pursuant to this article, but which have not been sold and delivered, and may issue negotiable bond anticipation notes therefor and may renew the bond anticipation notes from time to time, but the maximum maturity of any bond 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 moneys of the commission available therefor, including the revenues from the retail transactions and use taxes imposed pursuant to this article. 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 commission 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 bonds which the commission has been authorized to issue, less the amount of any bonds of the authorized issued 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 resolution or resolution authorizing them may contain provisions, conditions, or limitations which a resolution of the commission authorizing the issuance of bonds may contain.

26298.46. Any bonds issued under provisions of this article shall be legal investment for all trust funds, for the funds of insurance companies, commercial and savings banks, and trust companies, and for state school funds. Whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school districts, or other districts within the state, those moneys or funds may be invested in the bonds issued under this article. Whenever bonds of cities, cities and counties, counties, school districts, or other districts within this 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 moneys, the bonds issued under this article may be so used. This article shall be in addition to all other laws relating to legal investments and shall be controlling as the latest expression of the Legislature with respect thereto.

26298.48. Notwithstanding any other provision of law:

(a) The commission and its revenues are exempt from all taxes on, or measured by, income.

(b) Bonds issued by the commission are exempt from all property taxation, and the interest on the bonds is exempt from all taxes on income.

(c) All property owned by the commission is exempt from property taxes, assessments, and other public charges secured by liens.

26298.50. (a) Bonds issued under this chapter do not constitute a debt or liability of the state or of any other public agency, other than the commission, or a pledge of the faith and credit of the state or of any other public agency, other than the commission, but shall be payable solely from the funds provided therefor. All the bonds 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 or any public agency, other than the Orange County Regional Justice Facilities Commission, is pledged to the payment of the principal of, or interest on, this bond."

(b) The issuance of bonds under this chapter does not in any manner obligate the state or any other public agency thereof to levy, or to pledge any form of, taxation therefor or to make any appropriation for their payment.

26298.52. Neither the members of the board of directors of the commission, nor any person executing the bonds, are liable personally on the bonds, or are subject to any personal liability or accountability by reason of the issuance thereof.

26298.54. Any action or proceeding wherein the validity of the adoption of the retail transactions and use tax ordinance provided for in this article or the issuance of any bonds thereunder or any of the proceedings in relation thereto is contested, questioned, or denied, shall be commenced pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and 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 and the retail transactions and use tax provided for therein, shall be held to be valid and in every respect legal and incontestable.

26298.56. The county and each city within the county are authorized to contribute to the commission such amounts as the county and each city, in their discretion, deem appropriate. These amounts may be used by the commission for any lawful purpose. The commission may commit to repay any portion or all of the amounts contributed, together with interest thereon at a rate not exceeding the interest rate specified from time to time in Section 53531 or the Government Code, from any lawful source, including, but not limited to, revenues derived from the retail transactions and use tax ordinance adopted pursuant to this chapter.

26298.58. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SEC. 1.5. Chapter 13.8 (commencing with Section 26299.000) is added to Part 2 of Division 2 of Title 3 of the Government Code, to read:

CHAPTER 13.8. COUNTY REGIONAL JUSTICE FACILITIES FINANCING ACT

Article 1. General Provisions

26299.000. This chapter shall be known and may be cited as the County Regional Justice Facilities Financing Act.

26299.001. The Legislature hereby finds and declares that the existing state of overcrowding in jail facilities in counties is so great as to significantly impede the administration of justice and create a situation wherein persons who are a danger to society may be required to be released into that society for lack of adequate facilities to house them.

The Legislature further finds and declares that it is in the public interest to create county regional justice facilities financing agencies so that regional adult and juvenile detention facilities, countywide law enforcement facilities, court facilities, and prevention program needs may be addressed in an expeditious and appropriate fashion.

The Legislature further finds and declares that it is in the public interest to allow the voters in each county the opportunity to approve a general tax for the general governmental purposes of county regional justice facilities financing agencies.

26299.002. Unless the provision or context otherwise requires, the definitions contained in this article govern the construction of this chapter. The definition of a word applies to any of that word's variants.

26299.003. "Agency" means a county regional justice facilities financing agency.

26299.004. "Board of directors" means the board of directors of a county regional justice facilities financing agency established pursuant to this chapter.

26299.005. "Board of supervisors" means the board of supervisors of a county.

26299.006. "Bonds" means indebtedness and securities of any kind or class, including bonds, notes, bond anticipation notes, and commercial paper.

26299.007. "County" means Humboldt, Los Angeles, Riverside, San Bernardino, and Ventura Counties.

26299.008. "Court facilities" means the justice, municipal, and superior courts of the county, as well as any other facilities used for adult or juvenile court matters, criminal prosecutions, handling inmates, or a combination thereof.

26299.009. "Master plan" means the plan for construction and acquisition of juvenile and adult detention facilities, countywide law enforcement facilities, court facilities, and other structures necessary or convenient thereto. The plan shall be developed and approved, and may be amended from time to time, by the board of supervisors. The master plan may include, but is not limited to, the following:

(a) The number of adult and juvenile detention facilities,

countywide law enforcement facilities, court facilities, and other structures necessary or convenient thereto to be constructed, furnished, or acquired.

(b) The geographic areas in which the facilities referenced in subdivision (a) shall be sited.

(c) The time schedule according to which the facilities referenced in subdivision (a) shall be constructed, furnished, or acquired.

(d) Construction and design standards which shall apply to facilities constructed, furnished, or acquired pursuant to this chapter.

(e) Those other requirements as the board of supervisors, in carrying out its responsibility for the provision of regional detention services, deems necessary and appropriate.

26299.010. "Outstanding," when used as of any particular time with reference to bonds issued by the agency, means all bonds theretofore and thereupon being authenticated and delivered by an authenticating agent duly appointed by the agency or its authorized designee except:

(a) Bonds theretofore canceled by an authenticating agent or surrendered to such authenticating agent for cancellation.

(b) Bonds that are owned or held by or for the account of the agency or any other obligor on the bonds, or any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the agency or any other obligor on the bonds

(c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other bonds shall have been authenticated and delivered.

(d) Refunding bonds issued pursuant to Section 26299.073, except to the extent that the principal amount of the refunding bonds exceeds the principal amount of the bonds to be refunded with the proceeds of those refunding bonds.

26299.011. "Prevention program" means a program designed to decrease the number of inmates incarcerated in county juvenile and adult detention facilities by providing alternatives to incarceration, or by providing counseling diversion, or intervertion programs, work furlough programs, halfway houses, and own recognizance services. Counseling, diversion, or intervention programs, include, but are not limited to, drug and alcohol counseling, probation counseling, pretrial screening, and community programs intended to reduce or prevent juvenile criminal activity.

26299.013. "Qualifying facilities" means any of the adult and juvenile detention facilities, countywide law enforcement facilities, court facilities, and other structures necessary or convenient thereto, which may be constructed, furnished, or acquired pursuant to this chapter.

26299.014. This chapter 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 regional

justice facilities needs or improvements.

Article 2. Creation of the Agency, Powers and Duties, Membership

26299.020. (a) A county regional justice facilities financing agency may be established in any county, as defined in Section 26299.007, with membership and terms determined as provided in Section 26299.021, upon a finding of the board of supervisors that it is in the public interest to do so. Any such finding shall be adopted by resolution of the board of supervisors.

(b) A resolution adopted pursuant to subdivision (a), shall specify the number, membership, and terms of office of members of the board of directors of the agency as determined pursuant to Section 26299.021.

26299.021. The number, membership, and terms of office of the board of directors of a county regional justice facilities financing agency established pursuant to Section 26299.020, shall be determined by one of the following means.

(a) (1) The board of supervisors may establish the number, membership, and terms of office of the board of directors of the agency with the concurrence of the city councils representing both a majority of the cities in the county and a majority of the population in the incorporated area of the county.

(2) Notwithstanding the provisions of paragraph (1), the term of office of members of the board of directors shall be staggered, and shall not exceed four years.

(b) The board of supervisors may establish a board of directors of the agency comprised of five members, as follows:

(1) The county sheriff.

(2) Four other members, appointed by, and serving at the pleasure of, the board of supervisors, who shall have significant experience in detention, corrections, law enforcement, probation, or the judiciary. Not more than two of these four members may be members of the board of supervisors or other elected or appointed officers of the county.

(c) The board of supervisors may establish a board of directors of the agency comprised of seven members, as follows:

(1) The sheriff.

(2) The district attorney.

(3) Two members appointed by, and serving at the pleasure of, the city selection committee created pursuant to Article 1.1 (commencing with Section 50270) of Chapter 1 of Part 1 of Division 1 of Title 5, each of whom shall be either a member of the city council or the mayor of a city in the county. These two members may not represent the same city.

(4) Two members of the board of supervisors.

(5) One member appointed by, and serving at the pleasure of, the presiding judge of the superior court, who shall have significant

experience in detention, corrections, law enforcement, probation, or the judiciary.

26299.022. The term of any member serving on the board of directors by virtue of holding another public office shall terminate when that member ceases holding the other public office and a new member has been properly seated. The new member of the agency shall hold office for the remainder of the term of the member who was replaced by the new member.

26299.023. Vacancies occurring on the board of directors shall be filled by the appointing authority for the unexpired term.

26299.024. The board of supervisors shall call the first meeting of the board of directors and shall designate one of the members of the board of directors to serve as the chairperson at that meeting. Thereafter, a chairperson and vice chairperson of the board of directors shall be elected annually by vote of a majority of the members of the board of directors of the agency and shall serve for a period of one calendar year. The chairperson shall preside at all meetings, and the vice chairperson shall preside in the absence of the chairperson.

In the event of the absence or inability to act of both the chairperson and vice chairperson, 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 of the authority of the chairperson.

26299.025. A majority of the members of the agency shall constitute a quorum for the transaction of business, and all official acts of the agency shall require the affirmative vote of a majority of its members constituting a quorum, unless a two-thirds vote is required by this chapter.

26299.026. The acts of the agency shall be expressed by motion, resolution, or ordinance.

26299.027. The board of directors shall adopt those rules and procedures, consistent with the laws of the state, as it deems necessary to conduct its business.

26299.028. All meetings of the agency shall be conducted in the manner prescribed by the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5.

26299.029. In carrying out its purposes and powers, the agency may:

(a) Adopt a seal and alter it at its pleasure.

(b) Sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

All claims for money or damages against the agency are governed by Division 3.6 (commencing with Section 810) of Title 1, except as provided therein or by other statutes or regulations expressly applicable thereto.

(c) Subject to the limitations provided for in Section 26299.035, compensate the members of its board of directors for all reasonable

and necessary expenses incurred in the course of performing their duties.

(d) Appoint and employ an executive officer and clerical staff as may be necessary for the administration of the affairs of the agency. All other reasonably necessary staff may be hired by the agency or may be provided by the county. The county shall be reimbursed by the agency for the costs of any staff services provided to the agency by the county in accordance with an agreement entered into between the agency and the county.

(e) Enter into contracts. The agency may employ attorneys and consultants as necessary or convenient to carrying out its purpose and powers.

(f) Appoint policy committees as deemed necessary.

26299.030. The agency shall do all of the following:

(a) Adopt an annual budget.

(b) Adopt an administrative code, by ordinance, which prescribes the powers and duties of agency officers, the method of appointment of agency employees, and methods, procedures, and systems of operation and management of the agency.

(c) Cause a postaudit of the financial transactions of the agency 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 chapter.

26299.031. In carrying out the purposes of this chapter the agency shall have the power to do all of the following:

(a) Administer this chapter.

(b) Finance the construction, acquisition, and furnishing of adult and juvenile detention facilities, countywide law enforcement facilities, court facilities, and other structures necessary or convenient thereto, in compliance with a master plan developed and approved, as amended from time to time, by the board of supervisors for that purpose.

(c) Finance the acquisition of necessary lands, easements, and rights-of-way, including reimbursement to the county for any costs incurred by the county in acquiring such lands, easements, and rights-of-way, at sites designated or approved by the board of supervisors, for the general governmental purposes of the agency set forth in this section.

(d) Hold title as necessary or convenient to land or facilities constructed or acquired pursuant to this chapter, and convey title to such land or facilities to the county.

(e) Finance the operation and maintenance of any qualifying facilities constructed, acquired, or financed, in whole or in part, pursuant to this chapter or any adult and juvenile detention facilities, countywide law enforcement facilities, court facilities, and other structures necessary or convenient thereto which may become operational after the effective date of any transactions and use tax approved pursuant to this chapter.

(f) Reimburse costs incurred by the county in the operation of any

qualifying facilities constructed or acquired pursuant to this chapter, provided the board of supervisors certifies to the agency that progress toward completion of qualifying facilities has advanced substantially in accordance with the master plan, and reimburse costs incurred by the county in implementing the master plan.

(g) Retire all or a portion of any capital debt previously incurred for any adult or juvenile detention facilities, countywide law enforcement facilities, court facilities, or other structures necessary or convenient thereto which exist on the date the election is held for voter approval of the retail transactions and use tax ordinance authorized by this chapter.

(h) Finance all or part of the cost of any prevention program, as defined in Section 26299.011.

26299.032. In carrying out the purposes of this chapter the agency may finance the construction, acquisition, and furnishing of other county or city criminal justice and law enforcement facilities, provided the board of supervisors certifies to the agency that all current master plan requirements have been met.

26299.033. Notwithstanding any other provision of this chapter to the contrary, the board of directors of an agency shall have no power to determine the geographic locations at which any of the qualifying facilities specified in this chapter shall be sited.

26299.034. Notice of the time and place for the public hearing for the adoption of the annual budget shall be published one time in a newspaper of general circulation not later than the 15th day prior to the date of the hearing. The proposed annual budget shall be available for public inspection at least 15 days prior to the hearing.

26299.035. Members of the board of directors of the agency may be compensated at a rate not exceeding one hundred dollars ($100) for any day attending to the business of the agency, but not to exceed four hundred dollars ($400) in any month, and may be reimbursed for reasonable and necessary travel and other expenses incurred in the performance of their duties, as authorized by the agency.

26299.036 (a) Except as otherwise provided in subdivisions (b) and (c), the agency shall enter into a contract with the Board of Administration of the Public Employees' Retirement System, and the board shall enter into such a contract, to include all of the employees of the agency in that retirement system, and the employees shall be entitled to substantially similar health benefits as are state employees pursuant to Part 5 (commencing with Section 22751) of Division 5 of Title 2

(b) For purposes of providing retirement benefits, the agency may contract with the retirement system of which the employees of the county are members, in lieu of contracting with the board.

(c) Notwithstanding subdivision (a) or (b), to the extent that the agency contracts with the county or other agencies to utilize employees of the county or other agencies as employees of the agency, the agency need not establish any retirement benefits program for those employees.

26299.037. At the initial meeting of the agency, or at any subsequent meeting, the agency may approve a transactions and use tax ordinance and ballot proposition, and may call an election in accordance with Article 3 (commencing with Section 26299.040).

Article 3. Transactions and Use Tax

26299.040. The Legislature, by the enactment of this chapter, intends that the additional funds provided governmental agencies by this chapter shall supplement existing local revenues being used for the development and operation of regional justice facilities, and that local agencies maintain their existing commitment of local funds for regional justice facilities purposes.

26299.041. (a) A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of a county may be imposed by the agency in accordance with this chapter and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if the tax ordinance is adopted by a two-thirds vote of the agency and imposition of the tax 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 agency, and a county regional justice facilities master plan is adopted pursuant to Section 26299.009.

(b) A retail transactions and use tax approved by the electors pursuant to this chapter shall remain in effect for not longer than 30 years, or any lesser period of time specified in the tax ordinance. The tax may be continued in effect, or reimposed, by a tax ordinance adopted by a two-thirds vote of the agency and the reimposition of the tax is approved by a majority of the electors.

(c) The special elections required by subdivisions (a) and (b) for the initial imposition and reimposition, respectively, of a retail transactions and use tax may be consolidated, if the agency so determines, with a regular election.

26299.042. A tax ordinance adopted pursuant to Section 26299.041 shall take effect at the close of the polls on the day of the election at which the proposition is adopted. The initial collection of the transactions and use tax shall take place in accordance with Section 26299.049.

26299.043. The agency, in the ordinance adopted pursuant to Section 26299.041, shall state the nature of the tax to be imposed, the tax rate, the period during which the tax will be imposed, which of the financing activities enumerated in Section 26299.031 the agency proposes to exercise, and the specific activities and purposes, if any, for which the agency proposes to allocate any fixed portion of the tax proceeds. The purposes for which the tax may be imposed are the general governmental purposes of the agency as set forth in Section 26299.031.

The proposition shall include an appropriations limit for the agency pursuant to Section 4 of Article XIII B of the California

Constitution.

26299.044. (a) The county shall conduct a special election called by the agency for the purpose of approving a transactions and use tax ordinance adopted by the agency. The election shall be held within the incorporated and unincorporated areas of the county.

(b) The election shall be called and conducted in the same manner as provided by law for the conduct of special elections by a county.

(c) If the measure is approved by the voters, the cost incurred by the county in conducting the special election shall be reimbursed by the agency from proceeds of the retail transactions and use tax.

26299.045. The agency by two-thirds vote of its board of directors, subject to the approval of the voters, may impose a tax rate of one-half of 1 percent under this chapter and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. Neither this chapter nor the ordinance shall affect any tax otherwise authorized.

26299.046. The revenues from the tax imposed pursuant to this chapter may be allocated by the agency for the following purposes:

(a) To administer this chapter.

(b) To pay the costs of the financing, construction, acquisition, furnishing, maintenance, and operation of adult and juvenile detention facilities, countywide law enforcement facilities, court facilities, and other structures necessary or convenient thereto, in compliance with the adopted master plan.

(c) To finance all or any portion of the cost of any prevention program, as defined in Section 26299.011.

(d) To pay the costs of the financing and acquisition of necessary lands, easements, and rights-of-way at sites designated or approved by the agency, including any costs incurred by the agency in acquiring lands, easements, and rights-of-way.

(e) To hold title as necessary to land or facilities.

(f) To retire all or a portion of any capital debt previously incurred for any adult or juvenile detention facilities, countywide law enforcement facilities, court facilities, and other structures necessary or convenient thereto which exists on the date the election is held for voter approval of the retail transactions and use tax.

(g) To pay all debt service and any other related costs and expenses of any bonds issued pursuant to this chapter.

26299.047. When adopting its annual budget pursuant to Section 26299.030, the agency shall provide that the lawfully available moneys of the agency shall be used first for the payment of debt service on all outstanding limited tax bonds of the agency unless otherwise provided in the resolution providing for the issuance of such bonds, and, unless otherwise provided in an allocation or funding agreement, for the payment of all allocations required to be made pursuant to allocation or funding agreements between the agency and the county or any city in the county prior to the payment of operating costs and expenses and any other lawful costs and

expenses of the agency.

26299.048. If a retail transactions and use tax is adopted pursuant to this chapter, the agency shall prepare and submit a report to the board of supervisors and to the city council of each city in the county on or before January 1 of the year following the end of the first full fiscal year after that date that the taxes are imposed pursuant to this chapter and annually thereafter. The report shall evaluate, and report progress made in, the implementation of the adopted master plan in the preceding fiscal year.

26299.049. (a) Any transactions and use tax ordinance adopted pursuant to this chapter shall become operative as provided in Section 7265 of the Revenue and Taxation Code, or its successor.

(b) Prior to the operative date of the ordinance, the agency shall contract with the State Board of Equalization to perform all functions incidental to the administration and operation of the ordinance.

26299.050. (a) The combined rate of any transactions and use tax imposed in a county pursuant to this chapter and all other transactions and use taxes imposed in that county pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), or any other provision of law shall not exceed 1 percent.

(b) No tax shall be considered in a county in accordance with this part if, upon adoption, the combined rate of transactions and use taxes in the county will exceed 1 percent.

Article 4. Bonds

26299.060. (a) As part of the ballot proposition to approve the imposition of a retail transactions and use tax pursuant to this chapter, authorization may be sought to issue bonds payable from the proceeds of the tax to finance capital outlay expenditures as may be provided for in the master plan for county regional justice facilities adopted pursuant to Section 26299.009.

(b) Limited tax bonds may not be issued unless the estimated proceeds of the retail transactions and use tax for a period of 30 years after issuance of the bonds shall at least equal the aggregate principal and interest payable with respect to all limited tax bonds then outstanding plus the limited tax bonds proposed to be issued. For purposes of determining the principal amount of limited tax bonds outstanding, limited tax bonds shall be assumed to be paid at par either at their respective maturities or pursuant to mandatory sinking fund installments with respect thereto. For purposes of determining the aggregate interest payable with respect to any issue of limited tax bonds, bonds that bear interest at variable interest rates shall be assumed to bear interest for the terms thereof equal to the interest rate in effect on the date the bonds are issued or, in the case of limited tax bonds already outstanding, equal to the interest rate in effect on the date that the determination is made. For purposes

of determining the estimated proceeds of the retail transactions and use tax for a period of 30 years, a finding made by the agency, incidental to any prospective issuance of bonds, regarding the amount of the estimated proceeds shall be binding and conclusive for all purposes.

26299.061. (a) The bonds authorized by the voters concurrently with the approval of the retail transactions and use tax may be issued by the agency at any time, and from time to time, payable from the proceeds of the tax. The bonds shall be referred to as "limited tax bonds."

(b) The pledge of the retail transactions and use tax revenues for the limited tax bonds authorized under this chapter shall have priority over the use of any of the tax revenues for "pay-as-you-go" financing, or any other purposes except to the extent that that priority is expressly restricted in the resolution authorizing the issuance of the bonds.

26299.062. Limited tax bonds issued under this chapter may be used only for the following purposes:

(a) To finance the capital outlay expenditures for those qualifying facilities which the agency is authorized to construct, acquire, or furnish pursuant to Section 26299.032.

(b) To pay costs incurred in the issuance of the limited tax bonds.

(c) To fund a reserve fund for the limited tax bonds.

26299.063. Limited tax bonds shall be issued pursuant to a resolution adopted at any time, and from time to time, by a two-thirds vote of the board of directors of the agency. 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.

26299.064. (a) A resolution providing for the issuance of bonds pursuant to this chapter 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 rate allowed by Section 53531 of the

Government Code, payable at intervals determined by the agency.

(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, 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.

26299.065. The agency may provide for the limited tax bonds to bear a variable or fixed interest rate, for the manner and intervals in which the rate shall vary, and for the dates on which the interest shall be payable.

26299.066. (a) In the resolution authorizing the issuance of the bonds, the agency 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.

(b) Notwithstanding the provisons of subdivision (a), 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 therein.

26299.067. 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 agency, or at such other places as may be designated, or at both the office and other places at the option of the holders of the bonds.

26299.068. (a) The bonds, or each series thereof, shall be dated and numbered consecutively and shall be signed by the chairperson or vicechairperson of the agency at the treasurer of the agency, and the official seal, if any, of the agency shall be attached.

(b) The interest coupons, if any, of the bonds shall be signed by the treasurer of the agency. All of the signatures and the seal may be printed, lithographed, or mechanically reproduced. However, the bonds shall not be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the agency or its authorized designee.

(c) 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.

26299.069. The bonds may be sold as the agency determines by resolution. The agency may sell the bonds at a price below par, whether by negotiated or public sale.

26299.070. Delivery of any bonds issued pursuant to this chapter may be made at any place either inside or outside the state, and the purchase price may be received in cash or bank credits

26299.071. 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 agency 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 agency. Bonds so purchased shall be cancelled immediately.

26299.072. (a) The agency may provide for the issuance, sale, or exchange of refunding bonds to redeem or retire any bonds issued by the agency upon the terms, at the times and in the manner which it determines.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the agency, be applied to the purchase or retirement at maturity or redemption of outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or retirement at the maturity thereof and may, pending that application, be placed in escrow to be applied to the purchase or retirement at maturity or redemption on the date as may be determined by the agency.

(c) Pending that use, the escrowed proceeds may be invested and reinvested by the agency or its trustee in obligations of, or guaranteed by, the United States of America, or in certificates of deposit or time deposits secured by obligations of, or guaranteed by, the United States of America, maturing at a time or times appropriate to ensure the prompt payment of principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income, and profits, if any, earned or realized on the investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of the proceeds and interest, income, and profits, if any, earned or realized on the investment thereof may be returned to the agency for use by it in any lawful manner.

(d) The provisions of this chapter for the issuance and sale of bonds apply to the issuance and sale or refunding bonds.

26299.073. (a) 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 refunded will be paid pursuant to call or agreement with the holder 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.

26299.074. (a) The agency 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, provided that 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 agency available therefor, including the revenues from the retail transactions and use tax which may be imposed pursuant to this chapter. 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 agency has been authorized to issue, less the amount of any bonds 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 agency authorizing the issuance of bonds may contain.

26299.075. Any limited tax bonds issued pursuant to this chapter are a legal investment for all trust funds; for the funds of insurance companies, commercial and savings banks, and trust companies; and for state school funds. Whenever any money or funds may, by any law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school districts, or other districts within the state, that money or funds may be invested in the bonds issued pursuant to this chapter. Whenever bonds of cities, cities and counties, counties, school districts, or other districts within this 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 moneys, the bonds issued pursuant to 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.

26299.076. Notwithstanding any other provision of law:

(a) The agency and its revenues are exempt from all taxes on, or measured by, income.

(b) Bonds issued by the agency are exempt from all property taxation, and the interest on the bonds is exempt from all taxes on income.

(c) All property owned by the agency is exempt from property taxes, assessments, and other public charges secured by liens.

26299.077. (a) Bonds issued pursuant to this chapter do not constitute a debt or liability of the state or of any other public agency, other than the county regional justice facilities financing agency issuing the bonds, or a pledge of the faith and credit of the state or of any other public agency, other than the issuing agency, but shall be payable solely from the funds provided therefor. All of bonds 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 or any public agency, other than the _____ County Regional Justice Facilities Financing Agency, is pledged to the payment of the principal of or interest on this bond."

(b) The issuance of bonds pursuant to this chapter does not in any manner obligate the state or any other public agency thereof to levy, or to pledge any form of, taxation therefor or to make any appropriation for their payment.

26299.078. Neither the members of the board of directors of the agency, nor any person executing the bonds, are liable personally on the bonds, or are subject to any personal liability or accountability by reason of the issuance thereof.

26299.079. Any action or proceeding 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 pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure 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 and the retail transactions and use tax provided for therein, shall be held to be valid and in every respect legal and incontestable.

26299.080. The county and each city within the county is authorized to contribute to the agency such amounts as the county and each city, in their discretion, deem appropriate. These amounts may be used by the agency for any lawful purpose. The agency may commit to repay all or any portion of the amounts contributed, together with interest thereon at a rate not exceeding the interest rate specified from time to time in Section 53531 of the Government Code, from any lawful source, including, but not limited to, revenues derived from the retail transactions and use tax which may be imposed pursuant to this chapter.

26299.081. The agency has no power to impose any tax other than the transactions and use tax imposed upon approval of the voters in accordance with this chapter.

26299.082. It is the intent of the Legislature in enacting this chapter to ensure that counties are not deprived of state funds which might be made available to finance needed regional justice facilities,

including adult and juvenile detention facilities, countywide law enforcement facilities, court facilities, other structures necessary or convenient thereto, and prevention programs subsequent to the enactment of this chapter, whether those funds be provided by statute or constitutional amendment.

26299.083. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SEC. 2. Section 53721.6 is added to the Government Code, to read:

53721.6. (a) A retail transactions and use tax imposed by an ordinance adopted pursuant to Chapter 13.8 (commencing with Section 26299.000) of Part 2 of Division 2 of Title 3 shall be deemed to be a general tax for the purposes of this article unless the transactions and use tax ordinance, or an amendment thereto, either declares the tax to be a special tax or requires the proceeds of the tax to be placed in a fund other than the general fund of the county regional justice facilities financing agency, or a similar fund, and irrevocably restricts the use of the proceeds to specific purposes of more limited scope and type than the general governmental purposes of the county regional justice facilities financing agency set forth in Section 26299.031.

(b) The receipt or retention of the proceeds of the transactions and use tax, imposed by an ordinance adopted pursuant to Chapter 13.8 (commencing with Section 26299.000) of Part 2 of Division 2 of Title 3 by a bond trustee for bonds secured by the proceeds of the tax shall not cause a general tax to become a special tax.

SEC. 3. Section 7252.15 is added to the Revenue and Taxation Code, to read:

7252.15. "District," as used in this part, also means any county regional justice facilities financing agency imposing a tax pursuant to Chapter 13.8 (commencing with Section 26299.000) of Part 2 of Division 2 of Title 3 of the Government Code.

SEC. 4. Section 7252.30 is added to the Revenue and Taxation Code, to read:

7252.30. "District" also means the Orange County Regional Justice Facilities Commission, if authorized to impose transactions and use taxes pursuant to this part.

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

CHAPTER 1336

An act to amend, repeal, and add Sections 404, 5373.1, 5383, and 5392 of, and to add and repeal Sections 5371.3 and 5391.2 of, the Public Utilities Code, relating to carriers.

[Approved by Governor September 26, 1989 Filed with Secretary of State October 2, 1989]

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 an alternative form of charter-party carrier certification for those persons who provide transportation which is incidental to commercial river rafting or skiing. By so doing, the Legislature wishes to ensure that vehicles which provide that transportation are included in the vehicle and driver safety provisions applicable to other charter-party carriers, but are held to a lower required insurance level, not to exceed seven hundred fifty thousand dollars ($750,000), if their vehicles do not travel beyond a 50-mile radius of the point of origin of the carrier's operation.

SEC. 1.5. Section 404 of the Public Utilities Code is amended to read:

404. (a) All fees paid pursuant to this chapter, exclusive of any penalties for delinquency, shall be allowed by the commission in a separate order as an ordinary operating expense for purposes of establishing rates or charges. The commission shall authorize each person or corporation subject to Section 421 or 431 to annually adjust its rates or charges for intrastate services so as to collect from its customers and subscribers an amount sufficient to pay the amount of the fee required by Section 421 or 431 together with the costs of collecting the fee from each customer or subscriber.

(b) The commission shall adopt rules to determine the appropriate level of fees for carriers that provide transportation services incidental to commercial river rafting or skiing.

(c) Each person or corporation subject to Section 421 or 431 may identify separately, on the bill of each customer or subscriber, the amount to be paid by each customer or subscriber for purposes of funding the commission pursuant to this chapter.

(d) Persons or corporations subject to Section 421 or 431 shall pay the fee in accordance with Section 423 or 433 after collection from their customers or subscribers.

(e) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 1.6. Section 404 is added to the Public Utilities Code, to read:

404. (a) All fees paid pursuant to this chapter, exclusive of any penalties for delinquency, shall be allowed by the commission in a

separate order as an ordinary operating expense for purposes of establishing rates or charges. The commission shall authorize each person or corporation subject to Section 421 or 431 to annually adjust its rates or charges for intrastate services so as to collect from its customers and subscribers an amount sufficient to pay the amount of the fee required by Section 421 or 431 together with the costs of collecting the fee from each customer or subscriber.

(b) Each person or corporation subject to Section 421 or 431 may identify separately, on the bill of each customer or subscriber, the amount to be paid by each customer or subscriber for purposes of funding the commission pursuant to this chapter.

(c) Persons or corporations subject to Section 421 or 431 shall pay the fee in accordance with Section 423 or 433 after collection from their customers or subscribers.

(d) This section shall become operative on January 1, 1994.

SEC. 2. Section 5371.3 is added to the Public Utilities Code, to read:

5371.3. A class C certificate holder is one who provides transportation services incidental to commercial river rafting or skiing. This section does not apply to certificates issued under Section 5371.1 or 5371.2.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 3. Section 5373.1 of the Public Utilities Code is amended to read:

5373.1. (a) Each application for a charter-party carrier of passengers certificate or permit shall be accompanied by a filing fee as follows:

(1) Class A certificates—five hundred dollars ($500).

(2) Class B certificates—five hundred dollars ($500).

(3) Class C certificates—five hundred dollars ($500).

(4) Permits—five hundred dollars ($500).

(b) The commission shall also require each application to be accompanied by a fee to offset the cost of the charter-party carrier bus terminal inspections conducted by the Department of the California Highway Patrol. The fee shall be fifteen dollars ($15) per tour bus, as defined in Section 612 of the Vehicle Code, or a maximum of six thousand five hundred dollars ($6,500) for each operating carrier.

(c) The commission shall require each charter-party carrier to pass an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars ($15) per tour bus, or a maximum of six thousand five hundred dollars ($6,500), to offset the cost of the inspections.

(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.

(e) If an applicant has already purchased a class B certificate at a

fee of five hundred dollars ($500), and the applicant qualifies for a class C certificate, the fee may be transferred in order to obtain a class C certificate.

(f) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 3.5. Section 5373.1 is added to the Public Utilities Code, to read:

5373.1. (a) Each application for a charter-party carrier of passengers certificate or permit shall be accompanied by a filing fee as follows:

(1) Class A certificates—five hundred dollars ($500).

(2) Class B certificates—five hundred dollars ($500).

(3) Permits—five hundred dollars ($500).

(b) The commission shall also require each application to be accompanied by a fee to offset the cost of the charter-party carrier bus terminal inspections conducted by the Department of the California Highway Patrol. The fee shall be fifteen dollars ($15) per tour bus, as defined in Section 612 of the Vehicle Code, or a maximum of six thousand five hundred dollars ($6,500) for each operating carrier.

(c) The commission shall require each charter-party carrier to pass an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars ($15) per tour bus, or a maximum of six thousand five hundred dollars ($6,500), to offset the cost of the inspections.

(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.

(e) This section shall become operative on January 1, 1994.

SEC. 4. Section 5383 of the Public Utilities Code is amended to read:

5383. The commission shall create the following classifications or types of certificates for charter-party carriers of passengers:

Class A: from any point or points within the state to other points in or out of this state.

Class B: from any point within the territory of origin specified in the certificate to any points in the state, or territory of origin.

Class C: services provided incidental to commercial river rafting or skiing where no additional compensation is provided for the transportation.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 5. Section 5383 is added to the Public Utilities Code, to read:

5383. The commission shall create the following classifications or types of certificates for charter-party carriers of passengers:

Class A: from any point or points within the state to other points in or out of this state.

Class B: from any point within the territory of origin specified in the certificate to any points in the state or territory of origin.

This section shall become operative on January 1, 1994.

SEC. 6. Section 5391.2 is added to the Public Utilities Code, to read:

5391.2. Notwithstanding Section 5391, in granting certificates to the holders of class C certificates, the commission shall require that those carriers procure and continue in effect adequate protection against liability imposed by law upon the carrier for the payment of damages for personal bodily injuries, including death resulting therefrom; protection against a total liability of the carrier of passengers on account of bodily injuries to, or death of, more than one person as a result of any one accident; and protection against damage or destruction of property. The requirement of that assurance of protection against liability shall be seven hundred fifty thousand dollars ($750,000) per accident.

This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 7. Section 5392 of the Public Utilities Code is amended to read:

5392. The protection required under Sections 5391 and 5391.2 shall be evidenced by the deposit of any of the following with the commission covering each vehicle used or to be used under the certificate or permit applied for:

(a) A policy of insurance, issued by a company licensed to write insurance in this state, or by nonadmitted insurers subject to Section 1763 of the Insurance Code, if the policies meet the rules promulgated therefor by the commission.

(b) A bond of a surety company licensed to write surety bonds in the state.

(c) Evidence of the qualification of the charter-party carrier of passengers as a self-insurer as may be authorized by the commission.

(d) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 8. Section 5392 is added to the Public Utilities Code, to read:

5392. The protection required under Section 5391 shall be evidenced by the deposit of any of the following with the commission covering each vehicle used or to be used under the certificate or permit applied for:

(a) A policy of insurance, issued by a company licensed to write insurance in this state, or by nonadmitted insurers subject to Section 1763 of the Insurance Code, if the policies meet the rules promulgated therefor by the commission.

(b) A bond of a surety company licensed to write surety bonds in this state.

(c) Evidence of the qualification of the charter-party carrier of passengers as a self-insurer as may be authorized by the commission.

(d) This section shall become operative on January 1, 1994.

SEC. 9. The Public Utilities Commission shall report to the Legislature and the Governor on or before September 30, 1992, regarding the use of the class C certificates specified in this act.

CHAPTER 1337

An act to amend Section 35002 of, and to add Sections 9400.7 and 9400 8 to, the Vehicle Code, relating to vehicles.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 9400.7 is added to the Vehicle Code, to read:

9400.7. (a) Notwithstanding any other provision of law, except for restrictions in existence on June 1, 1989, and except as provided in subdivision (d), so long as any increases in the weight fees required by Section 9400, as enacted by Assembly Bill 471 of the 1989–90 Regular Session, remain in effect, no local agency located within an urbanized area within a county which is required to prepare a congestion management plan pursuant to Section 65089 of the Government Code may restrict the hours of operation on any street or highway which is otherwise open to truck use unless the local agency determines that the restriction is consistent with the adopted congestion management plan and is coordinated with adjacent local agencies so as to not unreasonably interfere with truck operations.

(b) If an inconsistency in access occurs between cities and counties, the inconsistent access provisions of the congestion management plan may be appealed to the California Transportation Commission. The commission shall review the inconsistent access plan and make a finding within 90 days of the appeal being filed. If the commission fails to make a finding within 90 days, the Director of Transportation shall review the issue and make a finding within 30 days.

(c) The access provisions of the congestion management plan shall not go into effect while an appeal is being made. If the commission makes a finding of inconsistency, the access provisions of the congestion management plan shall not become operative.

(d) (1) This section does not apply to Los Angeles County if the City of Los Angeles establishes restrictions on the hours of operation on any street or highway which is otherwise open to truck use.

(2) If the City of Los Angeles establishes restrictions under paragraph (1) and any other city in the County of Los Angeles establishes restrictions on the hours of operation on any street or highway which is otherwise open to truck use, the restrictions in that

other city shall conform to the restrictions imposed by the City of Los Angeles, except that the other city may appeal noncomforming restrictions to the commission pursuant to subdivision (b) for a determination as to whether a variance from this paragraph should be granted.

(3) The Legislature finds and declares that, because of unique and special traffic congestion problems in the County of Los Angeles and in the City of Los Angeles, the general provisions of this section cannot be made applicable to that county.

SEC. 2. Section 9400.8 is added to Vehicle Code, to read:

9400.8. Notwithstanding any other provision of law, if the voters approve Senate Constitutional Amendment 1 of the 1989–90 Regular Session, no local agency may impose a tax, permit fee, or other charge for the privilege of using its streets or highways, other than a permit fee for extra legal loads, after December 31, 1990, unless the local agency had imposed the fee prior to June 1, 1989.

SEC. 3. Section 35002 of the Vehicle Code is amended to read:

35002. (a) This division does not apply to any authorized emergency vehicle owned or operated by a governmental agency while being used in responding to and returning from emergency fire calls, while being moved from place to place in anticipation of emergency fire calls, when used during training in any fire service application or during fire prevention activities, or when vehicles ordinarily used for those purposes are necessarily transported for vehicle maintenance, repair, or service. This subdivision only applies to vehicles purchased prior to January 1, 1991.

(b) All vehicles purchased on and after January 1, 1991, and described in subdivision (a) shall comply with applicable permit requirements adopted by the Department of Transportation pursuant to this code, and shall meet the following requirements:

(1) It shall be the responsibility of the manufacturer to provide a gross axle weight rating (GAWR), gross combined weight rating (GCWR), and gross vehicle weight rating (GVWR), adequate to carry a full water tank with the allowance for personnel and miscellaneous equipment, including hose load, shown in the table below:

	Personnel	Misc. Equipment
Pumpers	1,200 lbs.	2,000 lbs.
Light Attack Apparatus	600 lbs.	900 lbs.
Water towers	1,200 lbs.	1,500 lbs.
Aerial Platforms with ground ladders	1,200 lbs.	2,500 lbs.
Aerial ladders with ground ladders	1,200 lbs.	2,500 lbs.

Fire apparatus shall be weighed and certified by the manufacturer to determine compliance with the table above prior to acceptance

by the purchaser. Apparatus and chassis manufacturers shall furnish certification of the gross vehicle weight rating (GVWR), gross combined weight rating (GCWR), and gross axle weight rating (GAWR) on a nameplate affixed to the apparatus.

(2) Any fire apparatus exceeding 31,000 pounds shall be equipped with a secondary braking system.

(c) Any other vehicle owned, operated, or rented by a state agency, county flood control district, or a flood control and water conservation district, while the vehicle is being used in responding to an emergency, may be operated as required with verbal permission from an authorized officer or employee of the agency having jurisdiction of the highways used, if a written permit for that use is obtained pursuant to Section 35780 within three days following the termination of the emergency. As used in this subdivision, "emergency" means a condition which poses an imminent threat of loss of property or a hazard to life, as determined by the public agency charged with responsibility to respond thereto.

(d) Any governmental agency operating an authorized emergency vehicle or other vehicle subject to this section is liable to the governmental agency having jurisdiction of any state or county highway for any damage to the highway or any highway structure caused by the operation of the vehicle of a size or weight of vehicle or load exceeding that specified in this division. The cost of repair of the damage is a proper charge against the support fund of the governmental agency operating the oversize or overweight vehicle.

(e) Neither the state nor any agency thereof is liable for damage to any highway or highway structure caused by vehicles operated, pursuant to this section, by or on behalf of a local authority or any other local governmental entity.

SEC 4. Nothing in this act shall be construed to allow local governments to impose fees not otherwise authorized by statute.

SEC. 5. 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, for other costs, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1338

An act to add Part 3.5 (commencing with Section 51500) to Division 31 of the Health and Safety Code, relating to corrections, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Part 3.5 (commencing with Section 51500) is added to Division 31 of the Health and Safety Code, to read:

PART 3.5. HOUSING FOR PRISON EMPLOYEES

51500. The Legislature finds and declares all of the following:

(a) In the past five years, the Department of Corrections has erected new state prisons in a number of communities.

(b) In most of these communities, there was insufficient housing to accommodate the needs of employees of the Department of Corrections.

(c) Local government officials and administrators from the Department of Corrections assumed that the free marketplace would generate the new housing which would be necessary to accommodate the needs of employees of the Department of Corrections.

(d) However, experience has shown that single-family housing in most locations and multiple-family housing in a number of locations has not materialized.

(e) This resultant shortage of housing has caused a hardship for employees of the Department of Corrections and local government officials, and further caused the delay in opening of at least one major new state prison.

It is now generally recognized that the necessary housing will not become available unless the state agencies responsible for housing assume a proactive role in removing barriers which have made it difficult or impossible for new housing to be developed in these new prison communities.

51501. The Public Employees' Retirement System (PERS) and the State Teachers' Retirement System (STRS) shall join with the Department of Housing and Community Development, the Office of the State Treasurer, the Department of Corrections, and the California Housing Finance Agency to determine what can be done to help produce affordable housing in communities with prisons. The participation of PERS and STRS in this program shall be in a manner as not to in any way jeopardize the fiscal stability of the retirement funds or to abrogate the fiduciary duty of their members.

51502. The California Department of Corrections, in cooperation with all the other state agencies named in Section 51501, shall jointly submit a report, not later than January 15, 1990, to the Governor, the Senate Committee on Rules, the Speaker of the Assembly, and the Joint Legislative Committee on Prison Construction and Operations, on the implementation of this part.

SEC. 2. (a) In enacting this section, the Legislature finds and declares that the decision to postpone the opening of the Pelican Bay State Prison imposed a significant cost burden on the County of Del Norte. County staff necessary to accommodate the added workload from the prison were hired and modifications to the county court facility necessary for the increased security requirements associated with the handling of maximum security prisoners were initiated. Because these expenditures were incurred by Del Norte County with the full expectation of the opening of the prison on time, and because the State of California was able to realize significant savings by postponing the opening of the prison, it is appropriate for the state to offer the county some assistance prior to the date Pelican Bay State Prison is occupied.

(b) (1) There is hereby appropriated from the General Fund the sum of one million one hundred ninety thousand dollars ($1,190,000) to the Controller for allocation as a loan to the County of Del Norte for the purpose of mitigating the impact of the late opening of Pelican Bay State Prison.

(2) The loan made pursuant to this subdivision shall be repaid, in annual installments of at least ten percent of the total amount to be repaid, within a period of not more than 10 years, plus interest at the rate calculated for moneys invested in the Pooled Money Investment Fund. In the event that the Controller certifies that the County of Del Norte is in default on this loan, the Director of Corrections is authorized to reduce amounts owed by the Department of Corrections to the County of Del Norte by up to eighty thousand dollars ($80,000) in a fiscal year, and to transfer the amount thus reduced to the Controller to offset the amount owed by the County of Del Norte on this loan. The first payment on this loan shall be due on July 1, 1991.

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 that the housing needs of prison employees and their families are met in areas as soon as possible, and to provide, as soon as possible, reimbursement to Del Norte County for costs incurred by the county due to a postponement in the opening of Pelican Bay State Prison, it is necessary that this act go into immediate effect.

CHAPTER 1339

An act to amend Sections 14501, 14512, 14514.5, 14518, 14520, 14520.5, 14522.5, 14524, 14525, 14525.5, 14529, 14530.5, 14537, 14538, 14539, 14541, 14544, 14551, 14552, 14561, 14562, 14571, 14571.3, 14571.7, 14572, 14572.5, 14573, 14573.5, 14573.6, 14574, 14575, 14580, 14581, and 14585 of, to add Sections 14502.5, 14512.7, and 14530.1 to, to repeal Section 14522 of, and to repeal and add Sections 14523 and 14560 of, the Public Resources Code, relating to beverage containers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 14501 of the Public Resources Code is amended to read:

14501. The Legislature finds and declares as follows.

(a) Experience in this state and others demonstrates that financial incentives and convenient return systems assure the efficient and large-scale recycling of beverage containers. Accordingly, it is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping center locations, independent and industry operated recycling centers, curbside programs, nonprofit dropoff programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically.

(b) California grocery, beer, soft drink, container manufacturing, labor, agriculture, consumer, environmental, government, citizen, recreational, taxpayer, and recycling groups have joined together in calling for an innovative program to generate large-scale redemption and recycling of beverage containers.

(c) This division establishes a beverage container recycling goal of 80 percent, and when the redemption rate for any one type of beverage container falls below 65 percent, the act provides for an increased refund value.

(d) It is the intent of the Legislature to ensure that every container type proves its own recyclability.

(e) It is the intent of the Legislature to make redemption and recycling convenient to consumers, and the Legislature hereby urges cities and counties, when exercising their zoning authority, to act favorably on the siting of multimaterial recycling centers, reverse vending machines, mobile recycling units, or other types of recycling opportunities, as necessary for consumer convenience, and the overall success of litter abatement and beverage container recycling

in the state.

(f) The purpose of this chapter is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities through the establishment of minimum refund values and processing fees and, through the proper application of these elements, to enhance the profitability of recycling centers, recycling locations, and other beverage container recycling programs.

(g) The responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department of Conservation.

(h) It is the intent of the Legislature, in enacting this division, that all empty beverage containers redeemed shall be recycled, and that the responsibilities and regulations of the department shall be determined and implemented in a manner which favors the recycling of redeemed containers, as opposed to their disposal.

(i) Nothing in this division shall be interpreted as affecting the current business practices of scrap dealers or recycling centers, except that, to the extent they function as a recycling center or processor, they shall do so in accordance with this division.

(j) The program established by this division will contribute significantly to the reduction of the beverage container component of litter in this state. .

SEC. 2. Section 14502.5 is added to the Public Resources Code, to read·

14502.5. "Account" means the Redemption Account, which is created as a subaccount in the California Beverage Container Recycling Fund pursuant to subdivision (c) of Section 14580.

SEC. 3. Section 14512 of the Public Resources Code is amended to read:

14512. "Empty beverage container" means a beverage container which meets all of the following requirements:

(a) Has the seal or closure installed by the manufacturer broken or removed.

(b) Does not contain foreign materials other than the residue of the beverage originally packaged in the beverage container by the manufacturer.

(c) Bears the message required by Section 14561, or is a refillable beverage container.

(d) Has a refund value established pursuant to Section 14560.

SEC. 4. Section 14512.7 is added to the Public Resources Code, to read:

14512.7. "Fund" means the California Beverage Container Recycling Fund established pursuant to subdivision (a) of Section 14580.

SEC. 5. Section 14514.5 of the Public Resources Code is amended to read:

14514.5. "Nonprofit dropoff program" means a recycling program which meets all of the following criteria:

(a) The program is organized under Section 501(c) or Section 501(d) of the Internal Revenue Code (26 U.S.C. Secs. 501(c) and 501(d)), or operated by, or caused to be operated by, a city, county, or other public agency.

(b) The program is certified by the department pursuant to Section 14541.5.

(c) The program accepts empty beverage containers from consumers with the intent to recycle them, but may pay the refund value. Except as provided in subdivision (c) of Section 14572, if the program pays the refund value the program shall pay the refund value, for all types of empty beverage containers, regardless of the beverage container's material.

SEC. 6. Section 14518 of the Public Resources Code is amended to read:

14518. "Processor" means any person, including a scrap dealer, certified by the department who purchases empty aluminum beverage containers, nonaluminum metal beverage containers, glass beverage containers, plastic beverage containers, or any other beverage containers, including any one or more of those beverage containers, which have a refund value established pursuant to this division, from recycling centers in this state for recycling, or, if the container is not recyclable, not for recycling, and who cancels, or who certifies to the department in a form prescribed by the department the cancellation of, the refund value of these empty beverage containers by processing empty beverage containers, in any manner which the department may prescribe. However, the department shall not take any action regulating scrap dealers or recycling centers who are processors or recycling centers unless authorized by and pursuant to the goals of this division.

SEC. 7. Section 14520 of the Public Resources Code is amended to read:

14520. "Recycling center" means an operation which is certified by the department and which accepts from consumers, and pays or provides the refund value pursuant to Section 14572 for, empty beverage containers intended to be recycled.

SEC. 8. Section 14520.5 of the Public Resources Code is amended to read:

14520.5. "Recycling location" means a place, mobile unit, reverse vending machine, or other device where a certified recycling center accepts one or more types of empty beverage containers from consumers, and pays or provides the refund value for one or more types of empty beverage containers. For purposes of subdivision (c) of Section 14572, "recycling location" means the aluminum reverse vending machine and does not mean the machine's physical location.

SEC. 9. Section 14522 of the Public Resources Code is repealed.

SEC. 10. Section 14522.5 of the Public Resources Code is amended to read:

14522.5. "Redemption" and "redeem" means the return to a recycling center or location of an empty beverage container for a refund of at least the refund value.

SEC. 11. Section 14523 of the Public Resources Code is repealed.

SEC. 12. Section 14523 is added to the Public Resources Code, to read:

14523. "Redemption payment" means the minimum amount paid by a distributor to the department for every beverage container sold or transferred to a dealer.

SEC. 13. Section 14524 of the Public Resources Code is amended to read:

14524. "Refund value" means the minimum refundable value established for each type of beverage container pursuant to Section 14560 which is paid by the following:

(a) A certified recycling center to the consumer or dropoff or collection center for each beverage container redeemed by the consumer or dropoff or collection center. With respect to consumers returning containers to recycling centers, the refund value shall not be subject to tax under the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code) or the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code).

(b) A processor to a certified recycling center, dropoff or collection program, curbside program, or nonprofit dropoff program for each beverage container received from the certified recycling center, dropoff or collection program, curbside program, or nonprofit dropoff program.

(c) The department to a processor, for every beverage container received by the processor from a certified recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program.

SEC. 14. Section 14525 of the Public Resources Code is amended to read.

14525. "Refillable beverage container" means any aluminum beverage container, nonaluminum metal beverage container, glass beverage container, plastic beverage container, or other beverage container, holding 150 fluid ounces or less of beverage, which has a minimum deposit of three cents ($0.03), and which ordinarily would be returned to the manufacturer to be refilled and resold.

SEC. 15. Section 14525 5 of the Public Resources Code is amended to read:

14525.5. "Reverse vending machine" means a mechanical device which accepts one or more types of empty beverage containers and issues a cash refund or a redeemable credit slip with a value not less than the container's refund value. The refund value payments shall be aggregated and then paid, if more than one container is redeemed in a single transaction.

SEC. 16. Section 14529 of the Public Resources Code is amended

to read:

14529. This division is a matter of statewide interest and concern and is applicable uniformly throughout the state. Accordingly, this division occupies the whole field of regulation of recycling-related refund values, redemption payments, deposits, and similar fees relating to beverage containers, as provided in this division, and to containers of wine and distilled spirits products. No city, county, or other public agency may enforce or implement any existing or new ordinance, resolution, regulation, or rule establishing recycling-related refund values, redemption payments, deposits, or similar fees relating to these containers in the state unless expressly authorized by this division. If a federal law is enacted which establishes recycling-related refund values, redemption payments, deposits, and similar fees, relating to beverage containers, other than a federal law only affecting federal lands, or if a state law is enacted by initiative, which establishes recycling-related refund values, redemption payments, deposits, and similar fees relating to beverage containers, this division shall become inoperative. This section does not prohibit the implementation or enforcement of any ordinance or regulation governing curbside or dropoff recycling programs operated by, or pursuant to a contract with, a city, county, or other public agency, including actions relating to fees, or establishing fees, for these programs.

SEC. 17. Section 14530.1 is added to the Public Resources Code, to read:

14530.1. There is hereby created within the department a recycling financial analysis and policy development unit, to develop, analyze, consolidate, and evaluate economic and policy proposals to carry out the objectives of this division, including, but not limited to, all of the following:

(a) Evaluate the solvency of the fund and the account on an ongoing basis in order to make recommendations and report to the Legislature.

(b) Identify the fiscal impacts of proposed recycling programs, or changes to existing recycling programs.

(c) Assess the economic impacts of recycling proposals and programs on the state's citizens and businesses, including the impact of adding new container types into existing law.

(d) Develop recommendations to better integrate the various recycling alternatives available from state government, local government, and private industry with the objective of reducing recycling costs to citizens and businesses and meeting the 80 percent recycling goal established by this division.

SEC. 18. Section 14530.5 of the Public Resources Code is amended to read:

14530.5. (a) For purposes of entering into contracts for consulting, promotional, or advisory services necessary to implement this division, the requirements of Sections 11042 and 14615 of the Government Code and Sections 10295 and 10318 of the Public

Contract Code do not apply to the activities of the department pursuant to this division, except that any sole source contract awarded by the department shall be reviewed and approved by the Department of General Services. This subdivision does not apply to any contract between the department and a certified recycling center for advertising and promotional purposes pursuant to Section 14581.

(b) In addition to any regulations which the department is required by statute to adopt, the department may adopt any other rules and regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code which the department determines may be necessary or useful to carry out this division or any of the department's duties or responsibilities imposed pursuant to this division.

(c) The department may prepare, publish, and issue printed pamphlets, promotional materials, and bulletins which the director deems necessary for the dissemination of information to the public concerning the activities of the department pursuant to this division.

SEC. 19. Section 14537 of the Public Resources Code is amended to read:

14537. The department shall keep accurate books, records, and accounts of all of its dealings, and these books, records, and accounts are subject to an annual audit by an auditing firm selected by the department. The auditing firm or the department shall also conduct a selective audit of entities making payments to, or receiving payments from, the department to determine whether redemption payments and applicable processing fees are being paid to the department on all beverage containers sold in California, and that refund values and processing fees are being paid out properly by the department. The audit shall be made a part of an annual report, copies of which shall be submitted to the Governor and the Legislature.

SEC 20. Section 14538 of the Public Resources Code is amended to read.

14538. The department shall certify the operators of recycling centers pursuant to this section. The director shall adopt, by regulation, a procedure for the self-certification of recycling centers, including standards for certification. These regulations shall require that all information be submitted to the department under penalty of perjury The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(a) The operator of the recycling centers demonstrates, to the satisfaction of the department, that the operator will operate in accordance with this division.

(b) The operator of the recycling center shall not knowingly pay a refund value for, or receive a refund value from any processor for, any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560.

(c) The operator of a recycling center shall take those actions which satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560.

(d) Unless exempted pursuant to subdivision (b) or (c) of Section 14572, the operator of a recycling center shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type.

(e) The operator of the recycling center shall notify the department promptly of any change in the nature of his or her operations which conflicts with information submitted in the operator's application for certification.

(f) The operator of a certified recycling center, or any person having paid any amount above the scrap value for aluminum, as listed in the American Metals Market publication, or having paid for glass and plastic an amount above the amount identified as the portion of the processing fee which are the costs for the recycler, as specified in paragraphs (1) and (2) of subdivision (a) of Section 14575, as determined by the department, shall be subject to an audit of empty beverage container redemptions by the department, in a manner determined by the department, to ensure that the operator is complying with this division and all regulations adopted pursuant to this division.

SEC. 20.5. Section 14538 of the Public Resources Code is amended to read:

14538. The department shall certify the operators of recycling centers pursuant to this section. The director shall adopt, by regulation, a procedure for the self-certification of recycling centers, including standards for certification. These regulations shall require that all information be submitted to the department under penalty of perjury. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(a) The operator of the recycling centers demonstrates, to the satisfaction of the department, that the operator will operate in accordance with this division.

(b) The operator of the recycling center shall not knowingly pay a refund value for, or receive a refund value from any processor for, any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560.

(c) The operator of a recycling center shall take those actions which satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560.

(d) Unless exempted pursuant to subdivision (b) or (c) of Section 14572, the operator of a recycling center shall accept, and pay at least the refund value for, all empty beverage containers, regardless of

type.

(e) The operator of the recycling center shall notify the department promptly of any change in the nature of his or her operations which conflicts with information submitted in the operator's application for certification.

(f) The operator of a certified recycling center, or any person having paid any amount above the scrap value for aluminum, as listed in the American Metals Market publication, or having paid for glass and plastic an amount above the amount identified as the portion of the processing fee which are the costs for the recycler, as specified in paragraphs (1) and (2) of subdivision (a) of Section 14575, as determined by the department, shall be subject to an audit of empty beverage container redemptions by the department, in a manner determined by the department, to ensure that the operator is complying with this division and all regulations adopted pursuant to this division.

(g) A certified recycling center or processor shall not pay any refund values, processing fees, or administrative fees to a noncertified recycling center.

(h) A certified recycling center or processor shall not knowingly pay any refund values, processing fees, or administrative fees on empty beverage containers or other containers coming into the state from out of state.

(i) A certified recycling center or processor shall not knowingly claim refund values, processing fees, or administrative fees on beverage containers received from noncertified recycling centers or on beverage containers which come from out of the state.

SEC. 21. Section 14539 of the Public Resources Code is amended to read:

14539. The department shall certify processors and shall require for certification that a processor demonstrate to the satisfaction of the department that the processor shall operate in accordance with this division. A processor shall not pay a refund value for, or receive a refund value from the department for, any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560. A processor shall take those actions necessary and approved by the department to cancel containers to render them unfit for reredemption.

SEC. 22. Section 14541 of the Public Resources Code is amended to read:

14541. (a) After notice and a hearing, the department may revoke, suspend, or refuse to renew a certificate granted pursuant to Section 14538 or 14539, or may impose a civil penalty on the holder of a certificate, for any one of, or any combination of, the following reasons:

(1) The certificate holder is convicted of any crime substantially related to the qualifications, functions, and duties of a certificate holder.

(2) The certificate holder engaged in fraud or deceit to obtain a certificate.

(3) The certificate holder engaged in dishonesty or substantial incompetence or fraud in performing the functions and duties of a certificate holder.

(4) The certificate holder willfully violated Section 14550, 14572, 14572.5, 14573, 14573.5, or 14575.

(b) In making a decision pursuant to subdivision (a), the department may do any of the following:

(1) Immediately revoke the certificate.

(2) Immediately suspend the certificate for a specified period of time.

(3) Permit the certificate holder to continue operation as a certified processor or recycling center until a specific date, at which time the revocation or suspension shall become effective.

(4) Permit the certificate holder to continue operation as a certified processor or recycling center on condition of complying with any conditions which the department determines would further the goals of this division

(5) Impose a civil penalty of not more than one hundred dollars ($100) per violation. Each day that a violation occurs shall be considered a separate violation. The department shall deposit all revenues from civil penalties in the California Beverage Container Recycling Fund.

(c) The department may examine the accounts and records of distributors and beverage manufacturers and assess a penalty of 10 percent per year and interest for underpayments of the redemption payments for containers to the California Beverage Container Recycling Fund. The department may also impose a penalty of 15 percent of the amount due for payments up to a month late and a 5 percent additional penalty for each month the payments continue to be unremitted.

(d) (1) The department may examine the accounts and records of any beverage manufacturer which pays a processing fee pursuant to Section 14575. The department may assess a penalty of 10 percent per year and interest for underpayments of the applicable processing fee to the California Beverage Container Recycling Fund. The department may also impose a penalty of 15 percent of the amount due for payments up to a month late and a 5 percent additional penalty for each month the payments continue to be unremitted.

(2) If the department determines that an audit of a beverage manufacturer shows that there has been an underpayment of a processing fee, the department may examine the records concerning beverage container sales of any container manufacturer who supplied the beverage containers to the beverage manufacturer.

SEC. 22.5. Section 14541 of the Public Resources Code is amended to read:

14541. (a) After notice and a hearing, the department may revoke, suspend, or refuse to renew a certificate granted pursuant to

Section 14538 or 14539, or may impose a civil penalty on the holder of a certificate, for any one of, or any combination of, the following reasons:

(1) The certificate holder or any officer, director, managing employee, or owner of the certificate holder is convicted of any crime substantially related to the qualifications, functions, and duties of a certificate holder.

(2) The certificate holder engaged in fraud or deceit to obtain a certificate.

(3) The certificate holder engaged in dishonesty or substantial incompetence or fraud in performing the functions and duties of a certificate holder.

(4) The certificate holder willfully violated this division or any regulation adopted pursuant to this division, including, but not limited to, any requirements concerning auditing, reporting, standards of operation, or being open for business.

(b) In making a decision pursuant to subdivision (a), the department may do any of the following:

(1) Immediately revoke the certificate.

(2) Immediately suspend the certificate for a specified period of time.

(3) Permit the certificate holder to continue operation as a certified processor or recycling center until a specific date, at which time the revocation or suspension shall become effective.

(4) Permit the certificate holder to continue operation as a certified processor or recycling center on condition of complying with any conditions which the department determines would further the goals of this division.

(5) Impose a civil penalty of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1000) per day for each subsequent separate violation of this division, except that if the penalty is imposed for the reasons specified in paragraph (3) of subdivision (a), the department may impose a civil penalty in an amount which equals total restitution for the damage caused by the actions of the certificate holders. Each day that a violation occurs shall be considered a separate violation. The department shall deposit all revenues from civil penalties in the California Beverage Container Recycling Fund.

(c) The department may examine the accounts and records of distributors and beverage manufacturers and assess a penalty of 10 percent per year and interest for underpayments of the redemption payments for containers to the California Beverage Container Recycling Fund. The department may also impose a penalty of 15 percent of the amount due for payments up to a month late and a 5 percent additional penalty for each month the payments continue to be unremitted.

(d) (1) The department may examine the accounts and records of any beverage manufacturer which pays a processing fee pursuant to Section 14575. The department may assess a penalty of 10 percent

per year and interest for underpayments of the applicable processing fee to the California Beverage Container Recycling Fund. The department may also impose a penalty of 15 percent of the amount due for payments up to a month late and a 5 percent additional penalty for each month the payments continue to be unremitted.

(2) If the department determines that an audit of a beverage manufacturer shows that there has been an underpayment of a processing fee, the department may examine the records concerning beverage container sales of any container manufacturer who supplied the beverage containers to the beverage manufacturer.

SEC. 23. Section 14544 of the Public Resources Code is amended to read:

14544. It is the intent of the Legislature that a redemption rate of 65 percent be achieved for each type of beverage container. If the minimum refund value for any type of beverage container fails to increase pursuant to Section 14560 because of the inclusion of empty, postfilled food or drink packaging materials which exceed 20 percent of the total volume used in the calculation of the redemption rate pursuant to Section 14551, the Legislative Analyst shall, by the date the increase in the minimum refund value would have otherwise taken effect, prepare and submit to the Legislature a report which shall include, but not be limited to, all of the following:

(a) Data on the redemption rate which has been achieved for that type of beverage container.

(b) Recommendations for how the 65 percent redemption rate may be achieved, including, but not limited to, the desirability of modifying the inclusion of empty postfilled food or drink packaging materials in the calculation of the redemption rate.

(c) Any benefits which have been derived from the inclusion of empty, postfilled food or drink packaging materials in the calculation of the redemption rate.

SEC. 24. Section 14551 of the Public Resources Code is amended to read:

14551. (a) The department shall establish reporting periods for the reporting of redemption rates and recycling rates, and each reporting period shall be six months, except that the first reporting period shall be the three-month period from October 1, 1987, to December 31, 1987. The department shall determine all of the following for each reporting period and shall issue a report on its determinations, within 70 days of the end of each reporting period:

(1) Sales of beverages in aluminum beverage containers, nonaluminum metal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers.

(2) Returns for recycling, and returns not for recycling, of empty aluminum beverage containers, nonaluminum metal beverage containers, glass beverage containers, plastic beverage containers, and other beverage containers in this state, including refillable beverage containers returned to distributors pursuant to Section

14572. These numbers shall be calculated using the average current weights of beverage containers, as determined and reported by the department. To these numbers shall be added and separately reported the following, if greater than, or equal to, zero:

(A) All empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling, and reported by weight to the department which do not have a refund value less the number specified in subparagraph (B).

(B) The number of beverage containers which comprise the first five percentage points of the redemption rate without including the empty postfilled aluminum, glass, and plastic food or drink packaging materials sold in the state, returned for recycling and reported by weight to the department which do not have a refund value.

(3) An aluminum beverage container redemption rate, the numerator of which shall be the number of empty aluminum beverage containers returned, including refillable aluminum beverage containers and empty postfilled aluminum food or drink packaging material included in paragraph (2), and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(4) An aluminum beverage container recycling rate, the numerator of which shall be the number of empty aluminum beverage containers returned for recycling, including refillable aluminum beverage containers, and the denominator of which shall be the number of aluminum beverage containers sold in this state.

(5) A nonaluminum metal beverage container redemption rate, the numerator of which shall be the number of empty nonaluminum metal beverage containers returned, and the denominator of which shall be the number of nonaluminum metal beverage containers sold in this state.

(6) A nonaluminum metal beverage container recycling rate, the numerator of which shall be the number of empty nonaluminum beverage containers returned for recycling, including refillable nonaluminum metal beverage containers, and the denominator of which shall be the number of nonaluminum metal beverage containers sold in this state.

(7) A glass beverage container redemption rate, the numerator of which shall be the number of empty glass beverage containers returned, including refillable glass beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of glass beverage containers sold in this state.

(8) A glass beverage container recycling rate, the numerator of which shall be the number of empty glass beverage containers returned for recycling, including refillable glass beverage containers, and the denominator of which shall be the number of glass beverage containers sold in this state.

(9) A plastic beverage container redemption rate, the numerator of which shall be the number of empty plastic beverage containers

returned, including refillable plastic beverage containers and empty postfilled food or drink packaging materials included in paragraph (2), and the denominator of which shall be the number of plastic beverage containers sold in this state.

(10) A plastic beverage container recycling rate, the numerator of which shall be the number of empty plastic beverage containers returned for recycling, including refillable plastic beverage containers, and the denominator of which shall be the number of plastic beverage containers sold in this state.

(11) A redemption rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(12) A recycling rate for other beverage containers, the numerator of which shall be the number of empty beverage containers other than those containers specified in paragraphs (1) to (10), inclusive, returned for recycling, and the denominator of which shall be the number of beverage containers, other than those containers specified in paragraphs (1) to (10), inclusive, sold in this state.

(13) The department may define categories of other beverage containers, and report a redemption rate and a recycling rate for each such category of other beverage containers.

(b) The department shall determine the manner of collecting the information for the reports specified in subdivision (a), including establishing procedures, to protect any proprietary information concerning the sales and purchases.

SEC. 25. Section 14552 of the Public Resources Code is amended to read:

14552. The department shall establish and implement an auditing system to ensure that the information collected, and refund values and redemption payments paid pursuant to this division, comply with the purposes of this division. The auditing system adopted by the department shall allow for reasonable shrinkage in material due to moisture, dirt, and foreign material. The department, after an audit by a qualified auditing firm and a hearing, shall adopt a standard to be used to account for shrinkage and shall incorporate this standard in the audit process.

SEC. 26. Section 14560 of the Public Resources Code is repealed.

SEC. 27. Section 14560 is added to the Public Resources Code, to read:

14560. (a) On and before October 31, 1989, every beverage distributor shall pay the department, for deposit into the fund, a redemption payment of one cent ($0.01) for every beverage container sold or offered for sale in this state by the distributor. On and before October 31, 1989, every beverage container sold or offered for sale in this state has a minimum refund value of one cent

($0.01), and any applicable redemption bonus, as defined pursuant to Section 14523 and calculated pursuant to Section 14581, as those sections read on January 1, 1989.

(b) (1) Except as provided in subdivisions (d), (e), (f), and (h), on and after November 1, 1989, every beverage distributor shall pay the department, for deposit into the fund, a redemption payment of two cents ($0 02) for every beverage container sold or offered for sale in this state by the distributor. On and after November 1, 1989, a beverage container with a capacity of 24 fluid ounces or more shall be considered as two beverage containers for purposes of redemption payments and refund values.

(2) On and after November 1, 1989, but not on or after December 31, 1989, every beverage container sold or offered for sale in this state has a minimum refund value of one cent ($0.01), and any applicable redemption bonus, as defined pursuant to Section 14523 and calculated pursuant to Section 14581, as those sections read on January 1, 1989.

(c) Except as provided in subdivisions (d), (e), and (h), on and after January 1, 1990, every beverage container sold or offered for sale in this state has a minimum refund value of five cents ($0.05) for every two beverage containers redeemed and two cents ($0.02) for every single or unpaired beverage container redeemed in a single transaction

(d) (1) From the effective date of the act amending this section until January 1, 1993, the department shall periodically review the fund and the account to ensure that there are adequate funds in the fund and the account to pay the refund values and other disbursements required by this division.

(A) If the department determines, pursuant to a review made pursuant to paragraph (1) that there may be inadequate funds to pay the refund values and necessary disbursements required by this division, it shall immediately notify the Chairs of the Natural Resources Committees of the Senate, the Natural Resources Committee of the Assembly, the Ways and Means Committee of the Assembly, and the Budget and Fiscal Review Committee of the Senate of the need for urgent legislative action.

(B) On or before 180 days after the notice is sent pursuant to paragraph (A), the department may eliminate expenditures from the account as necessary, according to the order of priorities specified in Section 14581, to ensure there are adequate funds in the fund and the account to pay the refund values and other disbursements required by this division.

(C) If the Legislature fails to act within 180 days after receiving the notice specified in paragraph (A) to ensure there are adequate funds to pay the refund values and other disbursements required in this division, the department may increase the redemption payment by an additional one-half cent ($0.005) for a period of not more than 120 days. In addition, the department may reduce the total amount of the refund value by one-half cent ($0.005) per beverage container

until the Legislature acts to protect the solvency of the funds and the account or until the reduction is no longer needed.

(2) On and after October 1, 1992, the department shall determine and announce whether a redemption payment of two cents ($0.02) per beverage container is sufficient to refund the refund values required pursuant to subdivision (c), for each three-month period.

If the department determines in a report issued pursuant to this paragraph, that the two cents ($0.02) per beverage container redemption payment is sufficient to pay the refund values as required pursuant to subdivision (c), then the redemption payment shall not be increased until the department determines that an increase is needed. If the department determines that an increase in the redemption payment is needed pursuant to paragraph (2) to pay the refund value specified in subdivision (c), the redemption payment shall be two and one-half cents ($0.025) 90 days after the department makes this determination. The department shall provide at least 60 days' notice of redemption payment increases to distributors. This redemption payment increase shall not be subsequently decreased.

(3) If, after the department has increased the redemption payment pursuant to paragraph (2), the department determines that there are inadequate funds to pay the refund values and disbursements required by this division, the department may continue the reduction in the total amount of refund value pursuant to subparagraph (C) of paragraph (1) until the Legislature acts to protect the solvency of the fund and the account or until the reduction in the refund value is no longer needed.

(e) On and after January 1, 1993, every beverage container sold or offered for sale in this state has a minimum refund value of five cents ($0.05) for every beverage container redeemed, except as provided in subdivision (h), if the redemption rate for that type of beverage container is less than 65 percent, as determined by the procedure set forth in subdivision (f).

(f) Except as provided in subdivision (h), on and after January 1, 1993, every distributor shall pay the department for deposit into the fund, a minimum redemption payment of three cents ($0.03) for every beverage container sold or offered for sale in this state if both of the following conditions are met for that specific type of beverage container:

(1) For the reporting period beginning January 1, 1992, and ending June 30, 1992, the redemption rate determined pursuant to Section 14551 for that type of beverage container is less than 65 percent.

(2) The average redemption rate for the highest two of any four reporting periods, the fourth period of which is the period ending June 30, 1992, is less than 65 percent.

(g) Except as provided in subdivisions (d) and (h), once any redemption payment is established for any type of beverage container, the redemption payment shall not be decreased based

upon the redemption rate.

(h) The redemption payment for a specific type of beverage container established pursuant to subdivision (f) shall be decreased to not less than two and one-half cents ($0.025) per beverage container if the redemption rate for that type of beverage container is 80 percent or more during all of four consecutive reporting periods and the refund value for that type of beverage container shall be five cents ($0.05) for every two beverage containers redeemed and two cents ($0.02) for every single or unpaired beverage container redeemed in a single transaction. The decrease shall occur six months following the end of the fourth reporting period. If the redemption rate for that type of beverage container thereafter falls below 65 percent for any two of any four consecutive reporting periods, the redemption payment for that type of beverage container shall be increased to three cents ($0.03) per container until a redemption rate of 80 percent or more, during all of four consecutive reporting periods, is established for that type of beverage container and the refund value for that type of beverage container shall be five cents ($0.05) for each beverage container redeemed.

(i) This section does not apply to any refillable beverage container.

(j) (1) Any certified processor or recycling center who submits a claim to the department or a processor, respectively, for a refund value established or revised by the act amending this section during the 1989–90 Regular Session, on any beverage container purchased by the processor or received by the recycling center before the effective date of the act amending this section at that session is guilty of fraud, and the department may impose a civil penalty of up to ten thousand dollars ($10,000) upon the processor or recycling center and may revoke the certification of the processor or recycling center

(2) Each certified processor and recycling center shall submit an affidavit to the department within 15 days of the effective date of the act amending this section at the 1989–90 Regular Session. The affidavit shall attest that the processor or recycling center will not submit a claim for a refund value established by the act amending this section, which is higher than the refund value actually paid by the processor or recycler on any beverage container purchased or received before the effective date of the act amending this section.

SEC. 28. Section 14561 of the Public Resources Code is amended to read:

14561. (a) (1) A manufacturer shall clearly indicate on every beverage container sold or offered for sale by that beverage manufacturer in this state the message "CA Redemption Value" or "California Redemption Value," by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

(2) On and after January 1, 1989, a manufacturer may affix the message "CA Cash Refund" or "California Cash Refund" on a beverage container sold or offered for sale by that beverage

manufacturer, instead of the message specified in paragraph (1), but the message shall be affixed in the manner prescribed in paragraph (1).

(3) Any refillable beverage container sold or offered for sale is exempt from this subdivision. However, any beverage manufacturer or container manufacturer may place upon, or affix to, a refillable beverage container, any message which they deem appropriate relating to the refund value of the container.

(b) On and after January 1, 1990, a manufacturer of wine and distilled spirit cooler beverages shall clearly indicate on every container thereof sold or offered for sale by that beverage manufacturer in this state the message specified in subdivision (a) by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

(c) No person shall offer to sell, or sell to a consumer a beverage container subject to subdivision (a) which has not been labeled pursuant to this section, except for a refillable beverage container which is exempt from labeling.

(d) On and after January 1, 1990, no person shall offer to sell, or sell to a consumer a beverage container subject to subdivision (b) which has not been labeled pursuant to this section, except for a refillable beverage container which is exempt from labeling.

(e) The department may require that any beverage container intended for sale in this state be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

(f) Any container labeled with the message specified in subdivision (a) or (b) shall have the minimum redemption payment established pursuant to Section 14560, which shall be paid by the distributor to the department pursuant to Section 14574.

SEC. 29. Section 14562 of the Public Resources Code is amended to read:

14562. The Legislature hereby finds and declares that the minimum redemption payment established by this article is a regulatory fee collected for the purpose of assuring the return for recycling of a greater percentage of the beverage containers sold in this state, and is beneficial to the beverage industry by assuring the more reliable availability of raw materials. Accordingly, the payments of redemption payments to the department for deposit in the California Beverage Container Recycling Fund are not the "proceeds of taxes," as that term is used in subdivision (c) of Section 8 of Article XIII B of the California Constitution, and the disbursement or encumbrance of money in the fund is not subject to the limitations imposed by that article.

SEC. 30. Section 14571 of the Public Resources Code is amended to read:

14571. (a) Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within

every convenience zone which accepts and pays the refund value at one location for all types of empty beverage containers during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m.

(b) For purposes of this section, if the recycling center is staffed and is not a reverse vending machine, a center is "open for business" if all of the following requirements are met:

(1) An employee of the certified recycling center or location is present during the hours of operation and available to the public to accept containers and to pay the refund values.

(2) A sign having a minimum size of two feet by two feet is posted at the certified recycling center or location indicating that the center or location is open. Where allowed by local zoning requirements or where zoning restrictions apply, the sign shall be of the maximum allowable size.

(3) The prices paid, by weight or per container, are posted at the location.

(c) For the purpose of this section, if the recycling center consists of reverse vending machines or other unmanned automated equipment, the center is "open for business" if the equipment is properly functioning, accepting all types of empty beverage containers at the recycling location, and paying posted refund values no less than the minimums required by this division.

SEC. 30.5. Section 14571 of the Public Resources Code is amended to read:

14571. (a) Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the refund value at one location for all types of empty beverage containers during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m.

(b) For purposes of this section, if the recycling center is staffed and is not a reverse vending machine, a center is "open for business" if all of the following requirements are met:

(1) An employee of the certified recycling center or location is present during the hours of operation and available to the public to accept containers and to pay the refund values.

(2) A sign having a minimum size of two feet by two feet is posted at the certified recycling center or location indicating that the center or location is open. Where allowed by local zoning requirements or where zoning restrictions apply, the sign shall be of the maximum allowable size.

(3) The prices paid, by weight or per container, are posted at the location.

(c) Except as provided in subdivision (d), for the purpose of this section, if the recycling center consists of reverse vending machines or other unmanned automated equipment, the center is "open for

business" if the equipment is properly functioning, accepting all types of empty beverage containers at the recycling location, and paying posted refund values no less than the minimums required by this division.

(d) On and after April 1, 1990, if a recycling center consists of reverse vending machines or other automated equipment, the recycling center is open for business if the equipment is properly functioning, and accepts all types of empty beverage containers at one physical recycling location within the recycling location.

SEC. 31. Section 14571.3 of the Public Resources Code is amended to read:

14571.3. (a) The department shall continuously assist any certified recycler to achieve greater service to the public in an economical and cost-effective manner. This assistance shall include, but not be limited to, advice on all of the following:

(1) Methods to enhance public participation in recycling.

(2) The most beneficial location, siting, and image of a recycling location.

(3) Methods to reduce costs and optimize efficiencies of existing resources.

(b) The department shall conduct regular, unannounced inspections of certified recycling centers for the purpose of determining that the requirements of this division are satisfied. The department shall assess civil penalties pursuant to subdivision (c) of Section 14591 for violations at certified recycling centers.

SEC. 32. Section 14571.7 of the Public Resources Code is amended to read:

14571.7. On or before March 1, 1989, in any convenience zone where a recycling location or locations were initially established, but where the location or locations cease to operate in accordance with Section 14571, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 120 days. After March 1, 1989, the department shall notify all dealers within that zone that a recycling location is required to be established within 90 days. The department shall offer a convenience incentive payment to one recycling location only. If, within 45 days of the notification, no recycling location has been established which satisfies the requirements of Section 14571, the department shall notify all dealers within that zone, and one or more dealers within that zone shall establish, or cause to be established, a recycling location. If, within 120 days of the initial notification, no recycling location has been established, all dealers within that zone shall, until a recycling location has been established, do one of the following:

(a) Offer to redeem all types of beverage containers.

(b) Pay to the fund the sum of one hundred dollars ($100) per day until a recycling location is established.

SEC. 32.5. Section 14571.7 of the Public Resources Code is amended to read:

14571.7. In any convenience zone where a recycling location or locations were initially established, but where the location or locations cease to operate in accordance with Section 14571, and in any convenience zone designated after January 1, 1990, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 90 days. The department shall offer a convenience incentive payment to one recycling location only. If, within 45 days of the notification, no recycling location has been established which satisfies the requirements of Section 14571, the department shall notify all dealers within that zone, and one or more dealers within that zone shall establish, or cause to be established, a recycling location.

SEC. 33. Section 14572 of the Public Resources Code is amended to read:

14572. (a) A certified recycling center shall accept from any consumer or dropoff or collection program any empty beverage container, and shall pay to the consumer or dropoff or collection program the refund value of the beverage container. The center may pay the refund value based on the weight of returned containers.

(b) Any recycling center, nonprofit dropoff program, or processor which was certified by the department as of June 30, 1988, which was in existence on January 1, 1986, and which refused, as of January 1, 1986, to accept at a particular location a certain type of empty beverage container may continue to refuse to accept at the location the type or types of empty beverage containers that the recycling center, nonprofit dropoff program, or processor refused to accept as of January 1, 1986. Any certified recycling center which refuses, pursuant to this subdivision, to accept a certain type or types of empty beverage containers is not eligible to receive convenience incentive payments unless the center agrees to accept all types of empty beverage containers. This subdivision does not preclude the certified recycling center from receiving a convenience incentive payment for beverage containers redeemed at locations which do accept all types of containers. Any recycling center which is certified after June 30, 1988, shall accept all beverage container types after January 1, 1989.

(c) On January 1, 1990, the department shall terminate any authorizations for retention of the redemption bonus made before January 1, 1990, pursuant to any other provision of law.

(d) Only a certified recycling center may pay the refund value to consumers, or dropoff or collection programs. No person shall pay a noncertified recycling center an amount which exceeds the scrap value for aluminum, as listed in the American Metals Market publication, or an amount for glass and plastic which exceeds the amount identified as the portion of the processing fee which are the costs for the recycler, as specified, in paragraphs (1) and (2) of subdivision (a) of Section 14571, as determined by the department.

(e) This section does not affect curbside programs under contract with cities or counties.

SEC. 34. Section 14572.5 of the Public Resources Code is amended to read:

14572.5. A certified recycling center, other than a reverse vending machine, shall accept from any consumer or any dropoff or collection program and pay the applicable deposit for any refillable empty beer and other malt beverage container. The certified recycling center shall return, or cause to be returned, the refillable beer and other malt beverage container to the beer and other malt beverage distributor or any willing purchaser, who shall then pay the deposit to the center. The beer and other malt beverage distributor or other purchaser shall also negotiate a handling fee with the recycling center for the return of these containers.

SEC. 35. Section 14573 of the Public Resources Code is amended to read:

14573. The department shall pay to a processor, for every empty beverage container received by the processor from a certified recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program, with proof of the delivery, the sum of all of the following amounts:

(a) The refund value.

(b) One and three-quarter percent of the refund value for administrative costs.

(c) The processing fee established pursuant to Section 14575.

The department shall make this payment within two working days of the date the department is notified of the delivery or within the time determined by the department to be necessary and adequate. The payment shall be made in the form and manner which the department may prescribe.

SEC. 36. Section 14573.5 of the Public Resources Code is amended to read:

14573.5. Except as provided in Section 14573.6, a processor shall pay to a certified recycling center, dropoff or collection program, curbside program, or nonprofit dropoff program, for all types of empty beverage containers, by type of beverage container, received by the processor from recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program, the sum of all of the following amounts:

(a) The refund value.

(b) One-half of one percent of the refund value for administrative costs.

(c) The portion of the processing fee established pursuant to Section 14575 representing the actual cost and financial return incurred by the recycling center, as determined by the department.

The processor shall make this payment within two working days of the date the processor receives these empty beverage containers, or within the time which the department determines to be necessary and adequate. A processor may authorize a redemption center to crush and compact beverage containers before the processor receives the containers.

SEC. 37. Section 14573.6 of the Public Resources Code is amended to read:

14573.6. No dropoff or collection program shall pay any refund value to the consumer, and a dropoff or collection program is not eligible to receive any sum paid pursuant to Section 14573 or 14573.5 for administrative costs.

SEC. 38. Section 14574 of the Public Resources Code is amended to read:

14574. (a) A distributor of beer and other malt beverages shall pay to the department the redemption payment for every beverage container, other than a refillable beverage container, sold or transferred to a dealer, less one-half of 1 percent for the distributor's administrative costs.

The payment shall be made not later than October 15, 1987, for labeled beverage containers sold or transferred on or before September 15, 1987; not later than November 15, 1987, for labeled beverage containers sold or transferred after September 15, 1987, but on or before September 30, 1987; not later than December 1, 1987, for labeled beverage containers sold or transferred between October 1, 1987, and October 31, 1987: not later than January 1, 1988, for labeled beverage containers sold or transferred between November 1, 1987, and November 30, 1987; and similarly not later than the first day of the second following month for each successive month.

(b) A distributor of carbonated mineral and soda waters and similar carbonated soft drinks in liquid form shall pay to the department the redemption payment for every beverage container, other than a refillable beverage container, sold or transferred to a dealer, less one-half of 1 percent for the distributor's administrative costs, within 40 days of any sale, or in the form and manner which the department may prescribe. No redemption payment applies to, or shall be paid for, any refillable beverage container.

(c) A distributor of wine and distilled spirit coolers shall pay to the department the redemption payment for every beverage container, other than a refillable beverage container, sold or transferred to a dealer on and after January 1, 1990, less one-half of 1 percent for the distributor's administrative costs, within 40 days of any sale, or in the form and manner which the department may prescribe. No redemption payment applies to, or shall be paid for, any refillable beverage container.

(d) Notwithstanding subdivisions (b) and (c), and upon approval of the department, a distributor of carbonated mineral and soda waters and similar carbonated soft drinks in liquid form, or a distributor of wine and distilled spirit coolers, may make payments in accordance with subdivision (a). The department shall prescribe the terms and conditions for payments pursuant to subdivision (a).

SEC. 39. Section 14575 of the Public Resources Code is amended to read:

14575. (a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than

the sum of paragraphs (1) and (2), the department shall establish a processing fee for the container, by the type of the material of the container, at least equal to the difference between the scrap value offered by a statistically significant sample of container manufacturers, beverage manufacturers, or willing purchasers, for each container sold by the beverage manufacturer, and the sum of both of the following:

(1) The actual cost of receiving, handling, processing, storing, transporting, and maintaining equipment for each container sold for recycling or, only if the container is not recyclable, for disposal, calculated pursuant to subdivision (b).

(2) A reasonable financial return for recycling centers and processors, calculated pursuant to subdivision (b).

(b) The department shall calculate a statewide average value for the amounts specified in paragraphs (1) and (2) of subdivision (a) for each type of material of the container sold and the processing fee specified in subdivision (a) on or before October 1, 1990, or whenever the statewide average scrap value changes by more than 15 percent, or more frequently if necessary, based on audited surveys of the costs specified in subdivision (a) at existing certified recycling centers, reverse vending machines, and processors, with standardized modifications for transportation distances and factors specific to a particular region, as determined by the department, and only if the container is not recyclable, local disposal fees. The processing fee shall be calculated in a manner which furthers the purposes of this division and the fee shall be sufficient to establish sufficient recycling locations and processors to achieve the goals established pursuant to subdivision (c) of Section 14501 and Section 14571. Sixty days prior to the calculation of the processing fee, the department shall submit a report to the Chairman of the Assembly Natural Resources Committee and the Chairman of the Senate Natural Resources and Wildlife Committee. The report shall include a summary of the fluctuations of costs and scrap values necessitating the recalculation. The report shall also highlight changes in markets, new technologies, and other business and economic factors.

(c) (1) Except as provided in paragraph (2), every beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner which the department may prescribe.

(2) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of

the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering or sale of that beverage brand within the state.

The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

(3) The department shall pay the processing fees collected on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The department shall pay the processing fees collected on unredeemed containers into the Redemption Account created pursuant to Section 14580. The department shall not use processing fees collected on unredeemed beverage containers to pay all or a portion of the processing costs determined pursuant to subdivision (a). The processor shall pay the recycling center that portion of the processing fee representing the actual cost and financial return incurred by the recycling center, as specified in subdivision (a).

(d) When assessing processing fees pursuant to subdivision (b), the department shall assess the processing fee on each container sold, by the type of material of the container, assuming that every container sold will be redeemed for recycling, whether or not the container is actually recycled. When calculating and assessing processing fees the department also shall not assume that redemption bonuses will be kept by recycling centers or locations.

(e) If there are no recycling locations within a convenience zone meeting the requirements of Section 14571, the department shall examine the level of the scrap values and determine whether the department is in compliance with this section. If the department is not in compliance with this section, the department shall recalculate the processing fee pursuant to this section.

(f) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee. The payment or credit shall be made no later than the date upon which the container manufacturer, or a designated agent, submits the invoice to the beverage manufacturer.

SEC. 39.5. Section 14575 of the Public Resources Code is amended to read.

14575. (a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than the sum of paragraphs (1) and (2), the department shall establish a processing fee for the container, by the type of the material of the container, at least equal to the difference between the scrap value

offered by a statistically significant sample of container manufacturers, beverage manufacturers, or willing purchasers, for each container sold by the beverage manufacturer, and the sum of both of the following:

(1) The actual cost of receiving, handling, processing, storing, transporting, and maintaining equipment for each container sold for recycling or, only if the container is not recyclable, for disposal, calculated pursuant to subdivision (b).

(2) A reasonable financial return for recycling centers and processors, calculated pursuant to subdivision (b).

(b) The department shall calculate a statewide average value for the amounts specified in paragraphs (1) and (2) of subdivision (a) for each type of container material sold and the processing fee specified in subdivision (a) in accordance with the following schedule:

(1) The statewide average value and processing fee in effect on January 1, 1990, shall remain in effect until October 1, 1991.

(2) On or before October 1, 1991, and on or before October 1 annually thereafter, or whenever the statewide scrap value changes by more than 15 percent, the department shall calculate a new average value and processing fee which shall be effective on October 1 of that same year.

(3) On or before October 1, 1990, the department shall calculate a new statewide average value and processing fee which shall be made public on or before that date, and which shall be done solely for information purposes and not for implementing this division. It is the intent of the Legislature that the 1990 informational calculation will serve to prepare interested parties and the public generally for the effect of a new statewide average value and processing fee to be implemented in 1991. It is the further intent of the Legislature that the 1991 calculation of the statewide average value and processing fee shall use new-to-date data and therefore is not necessarily identical to the 1990 calculation. Likewise it is the intent of the Legislature that each succeeding year's calculation shall use up-to-date data and may differ from the previous year's calculation.

(c) The calculations of the statewide average value and processing fee made pursuant to subdivision (b) shall be based on audited surveys of the costs specified in subdivision (a) at existing certified recycling centers, reverse vending machines, and processors, with standardized modifications for transportation distances and factors specific to a particular region, as determined by the department, and only if the container is not recyclable, local disposal fees. The processing fee shall be calculated in a manner which furthers the purposes of this division and the fee shall be sufficient to establish sufficient recycling locations and processors to achieve the goals established pursuant to subdivision (c) of Section 14501 and Section 14571. Sixty days prior to the annual calculation of the processing fee, the department shall submit a report to the Chairman of the Assembly Natural Resources Committee and the

Chairman of the Senate Natural Resources and Wildlife Committee. The report shall include a summary of the fluctuations of costs and scrap values necessitating the recalculation. The report shall also highlight changes in markets, new technologies, and other business and economic factors. The report shall include a description of the average per container statewide costs of recycling beverage containers, by each material type, for the following recycling systems, including a description of any assumptions used to allocate undifferentiated costs among material types, and a brief statement of the reason for the adoption of these assumptions:

(1) Automated recycling centers.

(2) Staffed recycling centers.

(3) Recycling centers established since September 29, 1988.

(4) Recycling centers established prior to September 29, 1988.

(5) Recyclers receiving convenience incentive payments, as feasible.

(6) Nonprofit dropoff programs.

(7) Curbside recycling programs.

(d) (1) Except as provided in paragraph (2), every beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner which the department may prescribe.

(2) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering or sale of that beverage brand within the state.

The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

(3) The department hall pay the processing fees collected on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The department shall pay the processing fees collected on unredeemed

containers into the Redemption Account created pursuant to Section 14580. The department shall not use processing fees collected on unredeemed beverage containers to pay all or a portion of the processing costs determined pursuant to subdivision (a). The processor shall pay the recycling center that portion of the processing fee representing the actual cost and financial return incurred by the recycling center, as specified in subdivision (a).

(e) When assessing processing fees pursuant to subdivision (b), the department shall assess the processing fee on each container sold, by the type of material of the container, assuming that every container sold will be redeemed for recycling, whether or not the container is actually recycled. When calculating and assessing processing fees the department also shall not assume that redemption bonuses will be kept by recycling centers or locations.

(f) If there are no recycling locations within a convenience zone meeting the requirements of Section 14571, the department shall examine the level of the scrap values and determine whether the department is in compliance with this section. If the department is not in compliance with this section, the department shall recalculate the processing fee pursuant to this section.

(g) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee. The payment or credit shall be made no later than the date upon which the container manufacturer, or a designated agent, submits the invoice to the beverage manufacturer.

SEC. 40. Section 14580 of the Public Resources Code is amended to read·

14580. (a) The department shall deposit all amounts paid as redemption payments by distributors pursuant to Section 14574, processing fees paid pursuant to Section 14575, civil penalties or fines paid pursuant to Section 14541 or subdivision (c) of Section 14591, and all other revenues received into the California Beverage Container Recycling Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the California Beverage Container Recycling Fund are hereby continuously appropriated to the department for expenditure without regard to fiscal year for the following purposes:

(1) The payment of refund values to processors pursuant to Section 14573.

(2) For a reserve for contingencies, which shall not be greater than an amount equal to one-fourth of the total amount paid to processors pursuant to Section 14573 during the preceding calendar year, plus any interest earned on that amount

(b) The moneys in the fund may be expended by the department for the administration of this division only upon appropriation by the Legislature in the annual Budget Act.

(c) After all of the expenditures pursuant to subdivisions (a) and (b) have been made, the balance remaining in the fund shall be deposited in the Redemption Account, which is hereby created as a

subaccount in the California Beverage Container Recycling Fund. Notwithstanding Section 13340 of the Government Code, the moneys in the Redemption Account are hereby continuously appropriated to the department, without regard to fiscal year, for the purposes specified in Section 14581.

SEC. 41. Section 14581 of the Public Resources Code is amended to read:

14581. The department shall periodically calculate and pay the refund values required in subdivisions (a), (b), (c), (e), and (h) of Section 14560 and may thereafter expend any additional funds remaining in the account, as specified in subdivision (c) of Section 14580, in the following order of priority:

(a) The department shall annually expend eight million dollars ($8,000,000) of the amount deposited in the account for urban, rural, aquatic, and recreational litter abatement and recycling activities, and for grants with statewide private nonprofit entities for recycling information, education, and promotion. The eight million dollars ($8,000,000) which the department may expend beginning January 1, 1990, pursuant to this paragraph, is a base amount, and, on and after January 1, 1991, the department shall adjust this base amount annually to reflect increases or decreases in the cost of living, as measured by the Department of Labor or a successor agency of the United States government. The funds for urban, rural, and recreational litter abatement and recycling activities shall be expended in the form of grants issued to local conservation organizations. Three-quarters of this amount shall be expended in the form of grants, as specified by the department, to certified community conservation corps, either existing or those established in the future, designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the last federal census, of more than 250,000 persons. Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(b) The department may expend up to thirteen million dollars ($13,000,000) of the amount deposited in the account for making convenience incentive payments, pursuant to Section 14585, until January 1, 1993.

(c) After making the expenditures specified in subdivisions (a) and (b), the department may annually expend, until June 30, 1990, up to two million dollars ($2,000,000) for contracts with certified recycling centers located in convenience zones for advertising and promotion.

SEC. 41.5. Section 14581 of the Public Resources Code is amended to read:

14581. The department shall periodically calculate and pay the refund values required in subdivisions (a), (b), (c), (e), and (h) of Section 14560 and may thereafter expend any additional funds remaining in the account, as specified in subdivision (c) of Section

14580, in the following order of priority:

(a) The department shall annually expend eight million dollars ($8,000,000) of the amount deposited in the account for urban, rural, aquatic, and recreational litter abatement and recycling activities, and for grants with statewide private nonprofit entities for recycling information, education, and promotion. The eight million dollars ($8,000,000) which the department may expend beginning January 1, 1990, pursuant to this paragraph, is a base amount, and, on and after January 1, 1991, the department shall adjust this base amount annually to reflect increases or decreases in the cost of living, as measured by the Department of Labor or a successor agency of the United States government. The funds for urban, rural, and recreational litter abatement and recycling activities shall be expended in the form of grants issued to local conservation organizations. Three-quarters of this amount shall be expended in the form of grants, as specified by the department, to certified community conservation corps, either existing or those established in the future, designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the last federal census, of more than 250,000 persons. Any grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(b) The department may expend up to thirteen million dollars ($13,000,000) of the amount deposited in the account for making convenience incentive payments, pursuant to Section 14585, until January 1, 1994.

(c) After making the expenditures specified in subdivisions (a) and (b), the department may annually expend, until June 30, 1990, up to two million dollars ($2,000,000) for contracts with certified recycling centers located in convenience zones for advertising and promotion.

SEC. 42. Section 14585 of the Public Resources Code is amended to read:

14585. (a) The department shall develop guidelines and criteria for issuing convenience incentive payments solely to assist in establishing recycling locations in convenience zones without sufficient recycling locations pursuant to Chapter 6 (commencing with Section 14570). The department may establish a convenience incentive payment if the payment meets all of the following:

(1) The payment shall be set by the department at the minimum level determined by the department to be sufficient to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(2) The department may revise the payment upon finding that the previous payment is inadequate, and shall revise the payment upon finding that the previous payment is excessive, to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(3) The department may require the operators of the recycling locations to maintain daily records of redemptions at the locations, and may require the locations to take any other steps necessary for the department to ensure that the operators do not receive an excessive convenience incentive payment.

(4) The department may make convenience incentive payments to the operators of recycling locations through processors or directly, at the department's discretion, in the same manner as the department pays refund values and processing fees to recycling locations.

(5) On and after January 1, 1989, the department shall not make convenience incentive payments to more than one certified recycling center in a convenience zone. When two or more convenience zones overlap by more than one-half mile, the department shall offer a single convenience incentive payment to cover the affected convenience zones. This convenience incentive payment shall not be split between the affected zones. The department shall stop making convenience incentive payments if another recycling center is willing to certify operation within the convenience zone without receiving payments pursuant to this section.

(6) If a convenience incentive payment to a certified recycling center located in a convenience zone exceeds eight hundred dollars ($800) per month, the department shall review the convenience zone to determine if the convenience zone should be exempted pursuant to Section 14571.8.

(b) The department shall conduct a study on use of each of the payment mechanisms authorized by subdivision (b) and on use of bonds, grants, and loans authorized by Section 14584 and report to the Legislature on or before January 1, 1989, on the effectiveness of each of these mechanisms.

(c) The department may authorize prepayment of convenience incentive payments to recycling centers pursuant to subdivision (a) for periods of up to one year at a time.

SEC. 42.5 Section 14585 of the Public Resources Code is amended to read:

14585. (a) The department shall develop guidelines and criteria for issuing convenience incentive payments solely to assist in establishing recycling locations in convenience zones without sufficient recycling locations pursuant to Chapter 6 (commencing with Section 14570). The guidelines and criteria shall determine the need for a convenience incentive payment for each eligible recycling location based upon the difference between the average monthly recycling location costs and the average monthly recycling location revenues. In calculating average monthly recycling location costs, the department shall calculate adminstrative and overhead costs as an amount which does not exceed the total of 40 percent of the average monthly recycling location's wages and benefits, 40 percent of the average monthly recycling location's costs for labor for

maintenance or machine leasing costs, and 30 percent of the average monthly recycling location's transportation costs.

(b) The department may establish a convenience incentive payment if the payment meets all of the following:

(1) The payment shall be set by the department at the minimum level determined by the department to be sufficient to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(2) The department may revise the payment upon finding that the previous payment is inadequate, and shall revise the payment upon finding that the previous payment is excessive, to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(3) The department may require the operators of the recycling locations to maintain daily records of redemptions at the locations, and may require the locations to take any other steps necessary for the department to ensure that the operators do not receive an excessive convenience incentive payment.

(4) The department may make convenience incentive payments to the operators of recycling locations through processors or directly, at the department's discretion, in the same manner as the department pays refund values and processing fees to recycling locations.

(5) On and after January 1, 1989, the department shall not make convenience incentive payments to more than one certified recycling center in a convenience zone. When two or more convenience zones overlap by more than one-half mile, the department shall offer a single convenience incentive payment to cover the affected convenience zones. This convenience incentive payment shall not be split between the affected zones. The department shall stop making convenience incentive payments if another recycling center is willing to certify operation within the convenience zone without receiving payments pursuant to this section.

(6) On and after October 1, 1990, the department shall pay convenience incentive payments in the following order of priority:

(A) The department shall pay convenience incentive payments to not more than 10 percent of the recycling locations located in convenience zones designated as low-population density zones by the department.

(B) The department shall pay convenience incentive payments to the remainder of eligible recycling locations which have the highest average monthly volume, by making payments based on each recycling location average monthly volume, commencing with the recycling location with the highest average monthly volume, until the funds available for convenience incentive payments are exhausted.

(7) Until January 1, 1993, the department may provide convenience incentive payments, as needed, to eligible recycling

locations, subject to the availability of funds and the requirements of Chapter 6 (commencing with Section 14570). The department shall annually, or more frequently, review the convenience incentive payments and may increase or reduce the convenience payments if the department determines that the initial commitment of funds is insufficient in excess of those funds which are necessary to provide the opportunity to redeem beverage containers in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(8) Except as provided in subparagraph (A) of paragraph (6) and notwithstanding subdivision (a), on and after October 1, 1990, the department shall not make a convenience incentive payment which exceeds seven cents ($0.07) per beverage container for the average monthly amount of beverage containers redeemed by a recycling location receiving convenience incentive payments.

(9) Except as provided in subparagraph (A) of paragraph (6), the department shall not make a convenience incentive payment which exceeds one thousand one hundred forty-five dollars ($1,145) to a recycling location per month.

(10) On or before January 1, 1993, the department may estimate the amount of the total convenience incentive payment available to an eligible recycling center through December 31, 1992, and notify the certified recycling center of that amount. The department may pay the amount of the convenience incentive payment estimated pursuant to this paragraph to the recycling center monthly, until December 31, 1992.

(c) If there are insufficient funds for making convenience incentive payments to all recycling locations in a convenience zone which the department determines are in need, the department shall review the convenience zone to determine if the convenience zone should be exempt pursuant to Section 14571.8.

(d) Any recycling location that locates in a convenience zone, thereby causing a preexisting recycling location to become ineligible to receive convenience incentive payments, is ineligible to receive any convenience incentive payments in that convenience zone.

(e) The department may authorize prepayment of convenience incentive payments to recycling centers pursuant to subdivision (a) for periods of up to one year at a time.

SEC. 43. (a) Section 20.5 of this bill incorporates amendments to Section 14538 of the Public Resources Code proposed by both this bill and AB 1001. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 14538 of the Public Resources Code, and (3) this bill is enacted after AB 1001, in which case Section 14538 of the Public Resources Code, as amended by Section 20 of this bill, shall remain operative only until the operative date of AB 1001, at which time Section 20.5 of this bill shall become operative.

(b) Section 22.5 of this bill incorporates amendments to Section 14541 of the Public Resources Code proposed by both this bill and AB

1001. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 14541 of the Public Resources Code, and (3) this bill is enacted after AB 1001, in which case Section 14541 of the Public Resources Code, as amended by Section 22 of this bill, shall remain operative only until the operative date of AB 1001, at which time Section 22.5 shall become operative and Section 22 of this bill shall not become operative.

(c) Section 30.5 of this bill incorporates amendments to Section 14571 of the Public Resources Code proposed by both this bill and AB 1001. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 14571 of the Public Resources Code, and (3) this bill is enacted after AB 1001, in which case Section 14571 of the Public Resources Code, as amended by Section 30 of this bill, shall remain operative only until the operative date of AB 1001, at which time Section 30.5 of this bill shall become operative.

(d) Section 32.5 of this bill incorporates amendments to Section 14571.7 of the Public Resources Code proposed by both this bill and AB 1001 It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 14571.7 of the Public Resources Code, and (3) this bill is enacted after AB 1001, in which case Section 14571.7 of the Public Resources Code, as amended by Section 32 of this bill, shall become operative only until the operative date of AB 1001, at which time Section 32.5 of this bill shall become operative.

(e) Section 39.5 of this bill incorporate amendments to Section 14575 of the Public Resources Code proposed by both this bill and AB 1001. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 14575 of the Public Resources Code, and (3) this bill is enacted after AB 1001, in which case Section 14575 of the Public Resources Code, as amended by Section 39 of this bill, shall remain operative only until the operative date of AB 1001, at which time Section 39.5 of this bill shall become operative.

(f) Section 41.5 of this bill incorporates amendments to Section 14581 of the Public Resources Code proposed by this bill and AB 1001. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 14581 of the Public Resources Code, and (3) this bill is enacted after AB 1001, in which case Section 14581 of the Public Resources Code, as amended by Section 41 of this bill shall remain operative only until the operative date of AB 1001, at which time Section 41.5 of this bill shall become operative.

(g) Section 42.5 of this bill incorporate amendments to Section 14585 of the Public Resources Code proposed by both this bill and AB

1001. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 14585 of the Public Resources Code, and (3) this bill is enacted after AB 1001, in which case Section 14585 of the Public Resources Code, as amended by Section 42 of this bill, shall remain operative only until the operative date of AB 1001, at which time Section 42.5 of this bill shall become operative.

SEC. 44. 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 45. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to encourage the recycling of beverage containers, thereby protecting the public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1340

An act to amend Sections 81651 81676, and 84810 of, to add and repeal Sections 81676.5, 87212, and 87355.5 of, and to repeal and add Section 87355 of, the Education Code, relating to community colleges, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 81651 of the Education Code is amended to read:

81651. The governing board of any community college district may purchase supplementary textbooks, library books, and educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals in any amount needed for the operation of the schools of the district without taking estimates or advertising for bids.

SEC. 2. Section 81676 of the Education Code is amended to read:

81676. Any person who is employed in a bookstore maintained by a community college pursuant to this section is a member of the classified service of the district in accordance with Section 88020. In the case of a person who, immediately preceding becoming a member of the classified service of a school district pursuant to this section, was employed, other than as a student or substitute employee, in a community college bookstore maintained by a student body organization, such prior service shall, for all purposes, be deemed service in the classified service of the employing community college district.

The disposition and accounting of revenue and expenditures of the bookstore operation shall be as prescribed by the California Community Colleges Budget and Accounting Manual. Net proceeds from the operation of a community college bookstore shall be used for the general benefit of the student body as determined by the governing board. Money may be expended for services and property, including, but not limited to, parking facilities, stadia, student centers, student unions, health centers, bookstores or auxiliary facilities for use of students or faculty members of the community college or employees of the district. Funds derived from the operation of a community college bookstore shall be subject to audit pursuant to Section 84040.

SEC. 3. Section 81676.5 is added to the Education Code, to read:

81676.5. (a) Pursuant to the authority granted by subdivision (a) of Section 70902, the governing board of any community college district may establish a bookstore or bookstores on district property.

(b) In the event that the governing board of a district determines not to operate its own bookstore or bookstores, the governing board may contract for the operation of a bookstore or bookstores, provided that any contract, whether a lease agreement, a consultant services contract, or other form of agreement, shall be competitively bid. The governing board shall let the contract pursuant to a fully advertised request for proposals process, awarding the contract on the basis of the best interests of the students of the district. In evaluating or awarding the contract, community college district governing boards shall give preference to student organizations, and shall encourage student organizations to submit bids.

(c) This section shall remain in effect only until, and shall be repealed, one year from the date that this section becomes effective or when the California Supreme Court decision on the appellate court case of 1st Street Books v. Marin Community College District (208 Cal. App. 3d 1275, review granted 6-22-89 (S009983)) becomes final, whichever occurs last.

SEC. 4. Section 84810 of the Education Code is amended to read:

84810. (a) Notwithstanding clause (2) in Section 84500.1, commencing with the 1986–87 fiscal year, and for each fiscal year thereafter, the governing board of a community college district that provides classes for inmates of any city, county, or city and county jail, road camp, or farm for adults, or a federal correctional facility

may include the units of average daily attendance generated in those classes and computed pursuant to Section 84520, for purposes of state apportionments. However, apportionments for this average daily attendance, whether generated in credit or noncredit courses, shall be limited to the lesser of either the district's actual current expenses for providing those classes or the noncredit apportionment rate calculated pursuant to Sections 84702.5 and 84704.

(b) Any courses conducted under this section shall conform to the criteria and standards adopted by the Board of Governors of the California Community Colleges under Section 71027, and shall be submitted to the Board of Governors for approval.

(c) Commencing on September 15, 1987, and annually thereafter, the chancellor shall report to the Department of Finance and the Joint Legislative Budget Committee on the extent that courses are offered under this section. The report shall include for each district receiving state apportionments in the preceding fiscal year for courses offered under this section:

(1) The name of the district.

(2) The name of the jail or other detention facility in which each course was conducted.

(3) The title of each course conducted.

(4) The headcount enrollment for each course.

(5) The credit and noncredit average daily attendance generated by each course.

(6) The cost of providing the courses reported by the district pursuant to subdivision (a).

(7) The actual apportionment revenue or reimbursement received by the district pursuant to subdivision (a).

SEC. 5. Section 87212 is added to the Education Code, to read:

87212. The governing board of a community college district may issue temporary certificates for the purposes of authorizing salary payments to certified employees whose credential applications are being processed or to personnel employed in child development programs whose permit applications are being processed. The applicant for a temporary certificate shall make a statement under oath that he or she has duly filed his or her application for a credential or permit together with the required fee and that to the best of his or her knowledge no reason exists why he or she should not be issued a certificate or permit. The certificate or permit shall be valid until the credential or permit originally requested is either issued or denied by the board of governors or the Commission on Teacher Credentialing.

This section shall remain in effect until July 1, 1991, or until the Chancellor's office of the California Community Colleges has concluded the processing of credentials.

SEC. 6. Section 87355 of the Education Code is repealed.

SEC. 7. Section 87355 is added to the Education Code, to read:

87355. Notwithstanding Section 87356, every person authorized to serve as a community college instructor, librarian, counselor,

student personnel worker, supervisor, administrator, or chief administrative officer under a credential shall retain the right to serve under the terms of that credential, and, for that purpose, shall be deemed to possess the minimum qualifications specified for every discipline or service covered by the credential until the expiration of that credential. The board of governors shall adopt regulations as necessary to implement this requirement.

SEC. 8. Section 87355.5 is added to the Education Code, to read:

87355.5. The Board of Governors of the California Community Colleges shall require that fees be levied for the issuance and renewal of teaching credentials, and the fingerprint investigative check conducted by the Department of Justice pending the adoption of regulations by the board of governors pursuant to this article establishing the minimum qualifications for hire of community college faculty members. The fees shall be set by the board of governors 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 remain in effect only until July 1, 1990, and as of that date is repealed, unless a later enacted statute chaptered prior to July 1, 1990, deletes or extends that date.

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 authorize the governing board of any community college district to purchase instructional computer software packages for the operation of the schools of the district without taking estimates or advertising for bids pursuant to Section 81651 of the Education Code, in order to make changes as soon as possible in the law concerning the authority of the governing boards of community college districts to establish a bookstore or bookstores on district property, in order to authorize community college districts to receive state apportionments for classes for inmates in federal correctional facilities, in order to authorize the governing board of a community college district to issue temporary certificates for the purposes as described in Section 87212 of the Education Code, in order to authorize persons described in Section 87355 of the Education Code providing service in a community college district under a credential to retain the right to serve under the terms of that credential and to be deemed to meet the minimum requirements specified in every discipline or service covered by the credential, and in order to require the board of governors to levy fees for the issuance and renewal of teaching and related credentials, and the fingerprint investigative check conducted by the Department of Justice, pending the adoption of regulations by the board of governors establishing the minimum qualifications for hire of community college faculty members pursuant to Article 2

(commencing with Section 87355) of Chapter 2.5 of Part 51 of the Education Code, it is necessary that this act take effect immediately.

CHAPTER 1341

An act to add Section 68206.2 to the Government Code, relating to courts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 68206.2 is added to the Government Code, to read:

68206.2. (a) On and after January 1, 1990, the state shall reimburse each small county which is not an option county under the Brown-Presley Trial Court Funding Act (Chapter 12 (commencing with Section 77000) of this title), for the cost of salary and per diem for any substitute judge assigned to replace a judge disqualified from acting as a judge while there is pending a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge pursuant to subdivision (a) of Section 18 of Article VI of the California Constitution, beginning with the salary and per diem for the seventh month following the disqualification.

(b) For purposes of this section, a "small county" is one which has a total of nine or fewer superior, municipal, and justice court judges.

SEC. 2. There is hereby appropriated from the General Fund to the Controller for disbursement to the County of San Benito the sum of ninety thousand dollars ($90,000) to reimburse the county for the cost of substitute judges who presided over justice court proceedings while the California Supreme Court decided whether suspended Judge Bernard McCullough should be removed from the bench.

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 needed financial relief for San Benito County as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1342

An act to amend Sections 14526.5, 14538, 14541, 14553, 14570, 14571, 14571.1, 14571.6, 14571.7, 14571.8, 14573, 14573.5, 14575, 14581, 14585, and 14591 of, and to add Sections 14503.5, 14506.5, 14506.7, 14513.5, 14515.6, 14541.3, and 14585.5 to, the Public Resources Code, relating to beverage containers, and making an appropriation therefor.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Section 14503.5 is added to the Public Resources Code, to read:

14503.5. "Average monthly volume" means the average number of empty beverage containers per month received by a certified recycling center.

SEC. 2. Section 14506.5 is added to the Public Resources Code, to read:

14506.5. "Commingled" means a mix of empty beverage containers, as defined in Section 14512, and all other containers of the same material type.

SEC. 3. Section 14506.7 is added to the Public Resources Code, to read:

14506.7. "Commingled rate" means the ratio of empty beverage containers, as defined in Section 14512, to all other containers of the same material type, as determined by the department.

SEC. 4. Section 14513.5 is added to the Public Resources Code, to read:

14513.5. "Low population density zone" means a convenience zone in a rural area with a low population density, as determined by the department.

SEC. 5. Section 14515.6 is added to the Public Resources Code, to read:

14515.6. "Physical recycling location" means the area in a convenience zone served by one or more reverse vending machines which accept all empty aluminum, glass, and plastic beverage containers and issue a cash refund or a redeemable credit slip and are located within 10 feet of each other. The physical recycling location shall redeem odd sized empty beverage containers or empty beverage containers made from other material types in a manner approved by the department. "Physical recycling location" does not include a combination of reverse vending machines which accept less than all empty aluminum, glass, and plastic beverage containers and one or more dropoff bins.

SEC. 6. Section 14526.5 of the Public Resources Code is amended to read:

14526.5. "Supermarket" means a full-line, self-service retail store

with gross annual sales of two million dollars ($2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items. For purposes of determining which dealers are supermarkets, the department shall use the annual updates of the Progressive Grocer Marketing Guidebook and any computer printouts developed in conjunction with the guidebook.

SEC. 7. Section 14538 of the Public Resources Code is amended to read:

14538. The department shall certify the operators of recycling centers pursuant to this section. The director shall adopt, by regulation, a procedure for the self-certification of recycling centers, including standards for certification. These regulations shall require that all information be submitted to the department under penalty of perjury. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(a) The operator of the recycling centers demonstrates, to the satisfaction of the department, that the operator will operate in accordance with this division.

(b) The operator of the recycling center shall not pay a refund value for, or receive a refund value from any processor for, any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560.

(c) The operator of a recycling center shall take those actions which satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product which does not have a refund value established pursuant to Section 14560.

(d) Unless exempted pursuant to subdivision (b) or (c) of Section 14572, the operator of a recycling center shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type.

(e) The operator of the recycling center shall notify the department promptly of any change in the nature of his or her operations which conflicts with information submitted in the operator's application for certification.

(f) The operator of a certified recycling center, or any person having paid any amount above the scrap value for aluminum, as listed in the American Metals Market publication, or having paid for glass and plastic an amount above the amount identified as the portion of the processing fee which are the costs for the recycler, as specified in paragraphs (1) and (2) of subdivision (a) of Section 14575, as determined by the department, shall be subject to an audit of empty beverage container redemptions by the department, in a manner determined by the department, to ensure that the operator is complying with this division and all regulations adopted pursuant to this division.

(g) A certified recycling center or processor shall not pay any refund values, processing fees, or administrative fees to a

noncertified recycler.

(h) A certified recycling center or processor shall not pay any refund values, processing fees, or administrative fees on empty beverage containers or other containers coming into the state from out of the state.

(i) A certified recycling center or processor shall not claim refund values, processing fees, or administrative fees on empty beverage containers received from noncertified recyclers or on beverage containers which come from out of the state.

SEC. 8. Section 14541 of the Public Resources Code is amended to read:

14541. (a) After notice and a hearing, the department may revoke, suspend, or refuse to renew a certificate granted pursuant to Section 14538 or 14539, or may impose a civil penalty on the holder of a certificate, for any one of, or any combination of, the following reasons:

(1) The certificate holder, or any officer, director, managing employee, or owner of the certificate is convicted of any crime substantially related to the qualifications, functions, and duties of a certificate holder.

(2) The certificate holder engaged in fraud or deceit to obtain a certificate.

(3) The certificate holder engaged in dishonesty or substantial incompetence or fraud in performing the functions and duties of a certificate holder.

(4) The certificate holder willfully violated this division or any regulation adopted pursuant to this division, including, but not limited to, any requirements concerning auditing, reporting, standards of operation, or being open for business.

(b) In making a decision pursuant to subdivision (a), the department may do any of the following:

(1) Immediately revoke the certificate.

(2) Immediately suspend the certificate for a specified period of time.

(3) Permit the certificate holder to continue operation as a certified processor or recycling center until a specific date, at which time the revocation or suspension shall become effective.

(4) Permit the certificate holder to continue operation as a certified processor or recycling center on condition of complying with any conditions which the department determines would further the goals of this division.

(5) Impose a civil penalty of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) per day for each subsequent separate violation of this division, except that if the penalty is imposed for the reasons specified in paragraph (3) of subdivision (a), the department may impose a civil penalty in an amount which equals total restitution for the damage caused by the actions of the certificate holders. Each day that a violation occurs shall be considered a separate violation. The

department shall deposit all revenues from civil penalties in the California Beverage Container Recycling Fund.

(c) The department may examine the accounts and records of distributors and beverage manufacturers and assess a penalty of 10 percent per year and interest for underpayments of the refund value for containers to the California Beverage Container Recycling Fund. The department may also impose a penalty of 15 percent of the amount due for payments up to a month late and a 5 percent additional penalty for each month the payments continue to be unremitted.

(d) The department may examine the accounts and records of any beverage manufacturer which pays a processing fee pursuant to Section 14575. The department may assess a penalty of 10 percent per year and interest for underpayments of the applicable processing fee to the California Beverage Container Recycling Fund. The department may also impose a penalty of 15 percent of the amount due for payments up to a month late and a 5 percent additional penalty for each month the payments continue to be unremitted.

If the department determines that an audit of a beverage manufacturer shows that there has been an underpayment of a processing fee, the department may examine the records of any container manufacturer who supplied the beverage containers to the beverage manufacturer.

SEC. 8.5. Section 14541 of the Public Resources Code is amended to read:

14541. (a) After notice and a hearing, the department may revoke, suspend, or refuse to renew a certificate granted pursuant to Section 14538 or 14539, or may impose a civil penalty on the holder of a certificate, for any one of, or any combination of, the following reasons:

(1) The certificate holder or any officer, director, managing employee, or owner of the certificate is convicted of any crime substantially related to the qualifications, functions, and duties of a certificate holder.

(2) The certificate holder engaged in fraud or deceit to obtain a certificate.

(3) The certificate holder engaged in dishonesty or substantial incompetence or fraud in performing the functions and duties of a certificate holder.

(4) The certificate holder willfully violated this division or any regulation adopted pursuant to this division, including, but not limited to, any requirements concerning auditing, reporting, standards of operation, or being open for business.

(b) In making a decision pursuant to subdivision (a), the department may do any of the following:

(1) Immediately revoke the certificate.

(2) Immediately suspend the certificate for a specified period of time.

(3) Permit the certificate holder to continue operation as a

certified processor or recycling center until a specific date, at which time the revocation or suspension shall become effective.

(4) Permit the certificate holder to continue operation as a certified processor or recycling center on condition of complying with any conditions which the department determines would further the goals of this division.

(5) Impose a civil penalty of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) per day for each subsequent separate violation of this division, except that if the penalty is imposed for the reasons specified in paragraph (3) of subdivision (a), the department may impose a civil penalty in an amount which equals total restitution for the damage caused by the actions of the certificate holders. Each day that a violation occurs shall be considered a separate violation. The department shall deposit all revenues from civil penalties in the California Beverage Container Recycling Fund.

(c) The department may examine the accounts and records of distributors and beverage manufacturers and assess a penalty of 10 percent per year and interest for underpayments of the redemption payments for containers to the California Beverage Container Recycling Fund. The department may also impose a penalty of 15 percent of the amount due for payments up to a month late and a 5 percent additional penalty for each month the payments continue to be unremitted.

(d) (1) The department may examine the accounts and records of any beverage manufacturer which pays a processing fee pursuant to Section 14575. The department may assess a penalty of 10 percent per year and interest for underpayments of the applicable processing fee to the California Beverage Container Recycling Fund. The department may also impose a penalty of 15 percent of the amount due for payments up to a month late and a 5 percent additional penalty for each month the payments continue to be unremitted.

(2) If the department determines that an audit of a beverage manufacturer shows that there has been an underpayment of a processing fee, the department may examine the records concerning beverage container sales of any container manufacturer who supplied the beverage containers to the beverage manufacturer.

SEC. 9. Section 14541.3 is added to the Public Resources Code, to read:

14541.3. (a) The department may issue any certificate pursuant to Section 14538 or 14539 as a probationary certificate.

(b) If the certificate holder is making an initial application for certification, the department may issue a probationary certificate instead of denying the application. The probationary certificate issued pursuant to this subdivision shall be issued for a limited period of not more than one year. Before the end of the probationary period, the department shall either issue a nonprobationary certificate, or, after notice to the probationary certificate holder, terminate the probationary certificate. Subsequent to the

termination, the former probationary certificate holder may request a hearing, which shall be conducted in the same form as a hearing for an applicant whose original application for certification is denied.

(c) If conditions are imposed on the certificate holder as part of a disciplinary proceeding conducted pursuant to paragraph (4) of subdivision (b) of Section 14541, the certificate holder's certificate shall be considered probationary. If, at any time, the certificate holder violates any term or condition of the probationary certificate, the certification may be revoked or suspended, after three days notice, without any further hearing by the department.

SEC. 10. Section 14553 of the Public Resources Code is amended to read:

14553. (a) All reports, claims, and other information required pursuant to this chapter or Sections 14573, 14573.5, and 14574, and submitted to the department shall be complete, legible, and accurate, as determined by the department by regulation, and shall be signed, by an officer, director, managing employee, or owner of the certified recycling center, processor, distributor, beverage manufacturer, container manufacturer, or other entity.

(b) The department may inspect the operations, processes, and records of any entity required to submit a report to the department pursuant to this division to determine the accuracy of the report and compliance with the requirements of this division.

(c) A violation of this subdivision is subject to the penalties specified in Section 14591.

SEC. 11. Section 14570 of the Public Resources Code, as amended by Chapter 117 of the Statutes of 1989, is amended to read:

14570. (a) Every dealer shall identify, by a clear and conspicuous sign of at least 10 inches by 15 inches posted at the entrance to the dealer's place of business, which specifies one of the following:

(1) The address and major cross streets, as provided by the department, of at least the certified recycling center, location, or locations, nearest to the dealer, which redeems all types of empty beverage containers at one location during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m.

(2) One of the following procedures for redeeming beverage containers is available, pursuant to Section 14571.6:

(A) Redemption is available at one or more designated cash registers.

(B) Redemption is available at a designated location in the dealer's place of business.

(C) Store personnel can be asked for the location of redemption location.

(b) Notwithstanding subdivision (a), the department may require a certified recycling center to operate not more than 15 hours of those 30 hours per week other than during 9:00 a.m. to 5:00 p.m. if the department determines it is necessary to further the goals of this division as specified in Section 14501. Prior to acting under this

subdivision, the department shall conduct a public hearing and consider consumer convenience as well as the economic impact on the certified recycling center, public health and safety, local zoning requirements, neighborhood opinion, and any other relevant factors.

SEC. 12. Section 14571 of the Public Resources Code is amended to read:

14571. (a) Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the refund value, if any, at one location for all types of empty beverage containers and is open for business during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 a.m. to 5:00 p.m.

(b) For purposes of this section, if the recycling center is staffed and is not a reverse vending machine, a center is "open for business" if all of the following requirements are met:

(1) An employee of the certified recycling center or location is present during the hours of operation and available to the public to accept containers and to pay the refund values.

(2) A sign having a minimum size of two feet by two feet is posted at the certified recycling center or location indicating that the center or location is open. Where allowed by local zoning requirements or where zoning restrictions apply, the sign shall be of the maximum allowable size.

(3) The prices paid, by weight or per container, are posted at the location.

(c) Except as provided in subdivision (d), for the purpose of this section, if the recycling center consists of reverse vending machines or other unmanned automated equipment, the center is "open for business" if the equipment is properly functioning, accepting all types of empty beverage containers at the recycling location, and paying posted refund values no less than the minimums required by this division.

(d) On and after April 1, 1990, if a recycling center consists of reverse vending machines or other automated equipment, the recycling center is open for business if the equipment is properly functioning, and accepts all types of empty beverage containers at one physical recycling location within the recycling location.

SEC. 13. Section 14571.1 of the Public Resources Code is amended to read:

14571.1. On or before February 1, 1990, and on or before January 1, annually thereafter, the department shall, on a statewide basis, designate all convenience zones as of that date, including convenience zones in underserved areas, and shall prepare a map or maps showing these convenience zones.

SEC. 14. Section 14571.6 of the Public Resources Code is amended to read:

14571.6. In any convenience zone where no recycling location has been established which satisfies the requirements of Section

14571, and in any convenience zone which has exceeded the 90-day period for the establishment of a recycling center pursuant to Section 14571.7, all dealers within that zone shall, until a recycling location has been established in that zone, do one of the following:

(a) Submit to the department an affidavit form provided by the department stating that all of the following standards of redemption of beverage containers in the store of the dealer are being met by each dealer:

(1) The dealer redeems all empty beverage container types at all open cash registers or one designated location in the store, during all hours the dealer is open for business.

(2) The dealer has posted a sign, pursuant to paragraph (2) of subdivision (a) of Section 14570, at the entrance of the dealer's place of business, that all empty beverage containers can be redeemed in the store.

(3) The dealer is delivering, or having delivered, all empty beverage containers received from the public to a certified recycling center or processor for recycling.

(b) Pay to the department for deposit in the California Beverage Container Recycling Fund the sum of one hundred dollars ($100) per day until a recycling location is established or until the standards for redemption specified in subdivision (a) are met.

SEC. 15. Section 14571 7 of the Public Resources Code is amended to read:

14571.7. In any convenience zone where a recycling location or locations were initially established, but where the location or locations cease to operate in accordance with Section 14571, and in any convenience zone designated after January 1, 1990, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 90 days. The department shall offer a convenience incentive payment to one recycling location only. If, within 45 days of the notification, no recycling location has been established which satisfies the requirements of Section 14571, the department shall notify all dealers within that zone, and one or more dealers within that zone shall establish, or cause to be established, a recycling location.

SEC. 16. Section 14571.8 of the Public Resources Code, as amended by Chapter 117 of the Statutes of 1989, is amended to read:

14571.8. (a) If the department determines that Section 14571 cannot be fulfilled in a particular convenience zone due to local zoning or dealer's leasehold restrictions for leases in effect on January 1, 1987, and that these factors are beyond the control of the department and the dealer, the department may establish an alternative minimum convenience requirement for that convenience zone which shall not conflict with the purposes of this division. No lease entered into by a dealer after January 1, 1987, may contain a leasehold restriction that prohibits or results in the prohibition of the establishment of a recycling location

(b) The director may grant an exemption to the requirements of

Section 14571 for an individual convenience zone only if all of the following conditions are met:

(1) The exemption will not significantly decrease the ability of consumers to conveniently return beverage containers for the redemption value to a certified recycling center redeeming all material types.

(2) The volume of beverage containers redeemed in the convenience zone is below the statewide average of beverage containers redeemed in convenience zones receiving a convenience incentive payment.

(3) The exemption will further the purposes of this division.

(4) The department conducts a public hearing for purposes of taking testimony on whether or not to provide an exemption from Section 14571. The department shall develop and implement a public hearing process for the granting of exemptions pursuant to this subdivision. This process shall be designed by the department to ensure that recycling locations and members of the public in the jurisdiction affected by the proposed exemption are aware of, and able to participate in, the exemption hearing process.

(5) The exemption will prevent the creation of excessive recycling locations.

(6) An alternative certified recycling center that redeems all types of beverage containers is located within two miles of the dealer which is located in the convenience zone proposed to be exempted. This paragraph does not apply to an exemption made pursuant to subdivision (c).

(c) Upon request of a city or county, the director may grant an exemption from the requirements of Section 14571 for the location of an individual nonprofit recycling center, or for a curbside recycling program, if the conditions established under subdivision (b) are met and, for an exemption granted for a curbside recycling program, the program recycles all types of beverage containers from households at least once every two weeks or twice monthly.

(d) Except as provided in subdivision (e), the total number of exemptions granted by the director under this section shall not exceed 15 percent of the total number of convenience zones identified by the department pursuant to this section.

(e) On and after June 1, 1991, the total number of exemptions granted by the director under this section shall not exceed 20 percent of the total number of convenience zones identified pursuant to this section.

(f) The department shall annually prepare and submit to the Governor and the Legislature a report on curbside recycling programs and on the potential need for exemption authority additional to that provided by subdivisions (d) and (e).

SEC. 17. Section 14573 of the Public Resources Code is amended to read:

14573. The department shall pay to a processor, for every empty beverage container received by the processor from a certified

recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program, upon presentation of a completed processor invoice accompanied by a shipping report from the supplier of the material, in the form adopted by the department, the sum of all of the following amounts:

(a) The refund value.

(b) One and three quarter percent of the refund value for administrative costs.

(c) The processing fee established pursuant to Section 14575.

The department shall make this payment within two working days of the date the department is notified of the delivery or within the time determined by the department to be necessary and adequate. If the payment is not made by the Controller to the certified processor within 20 working days of receipt of the claims schedule, the Controller shall pay the processor interest at the current prime lending rate for any period in excess of these 20 working days.

SEC. 18. Section 14573.5 of the Public Resources Code is amended to read:

14573.5. Except as provided in Section 14573.6, a processor shall pay to a certified recycling center, dropoff or collection program, curbside program, or nonprofit dropoff program, for all types of empty beverage containers, by type of beverage container, received by the processor from recycling center, curbside program, dropoff or collection program, or nonprofit dropoff program, upon receipt by the certified processor of a shipping report from the supplier of the material, in the form adopted by the regulations adopted by the department, the sum of all of the following amounts:

(a) The refund value.

(b) One-half of 1 percent of the refund value for administrative costs.

(c) The portion of the processing fee established pursuant to Section 14575 representing the actual cost and financial return incurred by the recycling center, as determined by the department.

The processor shall make this payment within two working days of the date the processor receives these empty beverage containers, or within the time which the department determines to be necessary and adequate. Under the procedures authorized by the department, a certified processor may authorize a certified recycling center to cancel containers on behalf of the certified processor.

SEC. 19. Section 14575 of the Public Resources Code is amended to read:

14575. (a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than the sum of paragraphs (1) and (2), the department shall establish a processing fee for the container, by the type of the material of the container, at least equal to the difference between the scrap value offered by a statistically significant sample of container manufacturers, beverage manufacturers, or willing purchasers, for each container sold by the beverage manufacturer, and the sum of

both of the following:

(1) The actual cost of receiving, handling, processing, storing, transporting, and maintaining equipment for each container sold for recycling or, only if the container is not recyclable, for disposal, calculated pursuant to subdivision (b).

(2) A reasonable financial return for recycling centers and processors, calculated pursuant to subdivision (b).

(b) The department shall calculate a statewide average value for the amounts specified in paragraphs (1) and (2) of subdivision (a) for each type of container material sold and the processing fee specified in subdivision (a) in accordance with the following schedule:

(1) The statewide average value and processing fee in effect on January 1, 1990, shall remain in effect until October 1, 1991.

(2) On or before October 1, 1991, and on or before October 1 annually thereafter or whenever the statewide scrap value changes by more than 15 percent, the department shall calculate a new average value and processing fee which shall be effective on October 1 of that same year.

(3) On or before October 1, 1990, the department shall calculate a new statewide average value and processing fee which shall be made public on or before that date, and which shall be done solely for information purposes and not for implementing this division. It is the intent of the Legislature that the 1990 informational calculation will serve to prepare interested parties and the public generally for the effect of a new statewide average value and processing fee to be implemented in 1991. It is the further intent of the Legislature that the 1991 calculation of the statewide average value and processing fee shall use new-to-date data and therefore is not necessarily identical to the 1990 calculation. Likewise it is the intent of the Legislature that each succeeding year's calculation shall use up-to-date data and may differ from the previous year's calculation.

(c) The calculations of the statewide average value and processing fee made pursuant to subdivision (b) shall be based on audited surveys of the costs specified in subdivision (a) at existing certified recycling centers, reverse vending machines, and processors, with standardized modifications for transportation distances and factors specific to a particular region, as determined by the department, and, if the container is not recyclable, local disposal fees. The processing fee shall be calculated in a manner which furthers the purposes of this division and the fee shall be sufficient to establish sufficient recycling locations and processors to achieve the goals established pursuant to subdivision (c) of Section 14501 and Section 14571. Sixty days prior to the annual calculation of the processing fee, the department shall submit a report to the Chairman of the Assembly Natural Resources Committee and the Chairman of the Senate Natural Resources and Wildlife Committee. The report shall include a summary of the fluctuations of costs and scrap values necessitating the recalculation. The report shall also highlight

changes in markets, new technologies, and other business and economic factors. The report shall include a description of the average per container statewide costs of recycling beverage containers, by each material type, for the following recycling systems, including a description of any assumptions used to allocate undifferentiated costs among material types, and a brief statement of the reason for the adoption of these assumptions:

(1) Automated recycling centers.

(2) Staffed recycling centers.

(3) Recycling centers established since September 29, 1988.

(4) Recycling centers established prior to September 29, 1988.

(5) Recyclers receiving convenience incentive payments, as feasible.

(6) Nonprofit dropoff programs.

(7) Curbside recycling programs.

(d) (1) Except as provided in paragraph (2), every beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner which the department may prescribe.

(2) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering or sale of that beverage brand within the state.

The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

(3) The department shall pay the processing fees collected on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The department shall pay the processing fees collected on unredeemed containers into the Redemption Account created pursuant to Section 14580. The department shall not use processing fees collected on unredeemed beverage containers to pay all or a portion of the

processing costs determined pursuant to subdivision (a). The processor shall pay the recycling center that portion of the processing fee representing the actual cost and financial return incurred by the recycling center, as specified in subdivision (a).

(e) When assessing processing fees pursuant to subdivision (b), the department shall assess the processing fee on each container sold, by the type of material of the container, assuming that every container sold will be redeemed for recycling, whether or not the container is actually recycled. When calculating and assessing processing fees the department also shall not assume that redemption bonuses will be kept by recycling centers or locations.

(f) If there are no recycling locations within a convenience zone meeting the requirements of Section 14571, the department shall examine the level of the scrap values and determine whether the department is in compliance with this section. If the department is not in compliance with this section, the department shall recalculate the processing fee pursuant to this section.

(g) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee. The payment or credit shall be made no later than the date upon which the container manufacturer, or a designated agent, submits the invoice to the beverage manufacturer.

SEC. 20. Section 14581 of the Public Resources Code is amended to read:

14581. The department shall periodically calculate and pay the refund values required in subdivisions (a), (b), (c), (e), and (h) of Section 14560 and may thereafter expend any additional funds remaining in the account, as specified in subdivision (c) of Section 14580, in the following order of priority:

(a) The department shall annually expend eight million dollars ($8,000,000) of the amount deposited in the account for urban, rural, aquatic, and recreational litter abatement and recycling activities, and for grants with statewide private nonprofit entities for recycling information, education, and promotion. The eight million dollars ($8,000,000) which the department may expend beginning January 1, 1990, pursuant to this paragraph, is a base amount, and, on and after January 1, 1991, the department shall adjust this base amount annually to reflect increases or decreases in the cost of living, as measured by the Department of Labor or a successor agency of the United States government. The funds for urban, rural, and recreational litter abatement and recycling activities shall be expended in the form of grants issued to local conservation organizations. Three-quarters of this amount shall be expended in the form of grants, as specified by the department, to certified community conservation corps, either existing or those established in the future, designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the last federal census, of more than 250,000 persons. Any grants provided pursuant to this

paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(b) The department may annually expend up to thirteen million dollars ($13,000,000) of the amount deposited in the account for making convenience incentive payments, pursuant to Section 14585, until January 1, 1993.

(c) After making the expenditures specified in subdivisions (a) and (b), the department may annually expend, until June 30, 1990, up to two million dollars ($2,000,000) for contracts with certified recycling centers located in convenience zones for advertising and promotion.

SEC. 21. Section 14585 of the Public Resources Code is amended to read:

14585. (a) The department shall develop guidelines and criteria for issuing convenience incentive payments solely to assist in establishing recycling locations in convenience zones without sufficient recycling locations pursuant to Chapter 6 (commencing with Section 14570). The guidelines and criteria shall determine the need for a convenience incentive payment for each eligible recycling location based upon the difference between the recycling location's average monthly costs and the recycling locations' average monthly revenue. In calculating average monthly recycling location costs, the department shall calculate adminstrative and overhead costs as an amount which does not exceed the total of 40 percent of the average monthly recycling location's wages and benefits, 40 percent of the average monthly recycling location's costs for labor for maintenance or machine leasing costs, and 30 percent of the average monthly recycling location's transportation costs.

(b) The department may establish a convenience incentive payment if the payment meets all of the following:

(1) The payment shall be set by the department at the minimum level determined by the department to be sufficient to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(2) The department may revise the payment upon finding that the previous payment is inadequate, and shall revise the payment upon finding that the previous payment is excessive, to establish convenience in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(3) The department may require the operators of the recycling locations to maintain daily records of redemptions at the locations, and may require the locations to take any other steps necessary for the department to ensure that the operators do not receive an excessive convenience incentive payment.

(4) The department may make convenience incentive payments to the operators of recycling locations through processors or directly, at the department's discretion, in the same manner as the department pays refund values and processing fees to recycling locations.

(5) On and after January 1, 1989, the department shall not make convenience incentive payments to more than one certified recycling center in a convenience zone. When two or more convenience zones overlap by more than one-half mile, the department shall offer a single convenience incentive payment to cover the affected convenience zones. This convenience incentive payment shall not be split between the affected zones. The department shall stop making convenience incentive payments if another recycling center is willing to certify operation within the convenience zone without receiving payments pursuant to this section.

(6) On and after October 1, 1990, the department shall pay convenience incentive payments in the following order of priority:

(A) The department shall designate not more than 15 percent of the total number of convenience zones as low population density zones and zones with curbside programs. The department may pay convenience incentive payments to eligible certified recycling centers in the low population density zones and may pay convenience incentive payments to eligible certified recycling centers in zones with curbside programs, as determined by the department.

(B) The department shall pay convenience incentive payments to the remainder of eligible recycling locations which have the highest average monthly volume, by making payments based on each recycling location average monthly volume, commencing with the recycling location with the highest average monthly volume, until the funds available for convenience incentive payments are exhausted.

(7) Until January 1, 1993, the department may provide convenience incentive payments, as needed, to eligible recycling locations, subject to the availability of funds and the requirements of Chapter 6 (commencing with Section 14570). The department shall annually, or more frequently, review the convenience incentive payments and may increase or reduce the convenience payments if the department determines that the initial commitment of funds is insufficient or in excess of those funds which are necessary to provide the opportunity to redeem beverage containers in the convenience zone pursuant to Chapter 6 (commencing with Section 14570).

(8) Except as provided in subparagraph (A) of paragraph (6) and notwithstanding subdivision (a), on and after October 1, 1990, the department shall not make a convenience incentive payment which exceeds seven cents ($0.07) per beverage container for the average monthly amount of beverage containers redeemed by a recycling location receiving convenience incentive payments.

(9) Except as provided in subparagraph (A) of paragraph (6), the department shall not make a convenience incentive payment which exceeds one thousand one hundred forty-five dollars ($1,145) to a recycling location per month.

(10) On or before January 1, 1993, the department may estimate

the amount of the total convenience incentive payment available to an eligible recycling center through December 31, 1992, and notify the certified recycling center of that amount. The department may pay the amount of the convenience incentive payment estimated pursuant to this paragraph to the recycling center monthly, until December 31, 1992.

(c) If there are insufficient funds for making convenience incentive payments to all recycling locations in a convenience zone which the department determines are in need, the department shall review the convenience zone to determine if the convenience zone should be exempt pursuant to Section 14571.8.

(d) Any recycling location that locates in a convenience zone, thereby causing a preexisting recycling location to become ineligible to receive convenience incentive payments, is ineligible to receive any convenience incentive payments in that convenience zone.

(e) The department may authorize prepayment of convenience incentive payments to recycling centers pursuant to subdivision (a) for periods of up to one year at a time.

SEC. 22 Section 14585.5 is added to the Public Resources Code, to read:

14585.5. (a) On and after April 1, 1990, except as provided in subdivision (b), the department shall not make convenience incentive payments to any certified recycling location where the department determines that all empty beverage container types are not redeemed at the same physical location within the recycling location.

(b) A certified recycling center that redeems all empty beverage container types at the same physical location within the recycling location, and issues script to consumers which is required to be redeemed at a nearby host business, is eligible to receive convenience incentive payments.

SEC. 23. Section 14591 of the Public Resources Code, as amended by Section 3 of Chapter 117 of the Statutes of 1989, is amended to read:

14591. (a) Except as provided in subdivision (b), in addition to any other applicable civil or criminal penalties, any person convicted of a violation of this division is guilty of an infraction, which is punishable by a fine of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) for each subsequent separate violation per day.

(b) Every person who, with intent to defraud, submits a false or fraudulent claim for payment pursuant to Section 14573 or 14573.5 or who, with intent to defraud, fails to accurately report the number of beverage containers sold, as required by subdivision (b) of Section 14550, or who, with intent to defraud, fails to make payments as required by Section 14574 or who, with intent to defraud, redeems containers which have already been redeemed or returns redeemed containers to the marketplace for redemption with intent to defraud, or who submits a false or fraudulent claim for convenience incentive

payments pursuant to Section 14585, is guilty of fraud. If the money obtained or withheld exceeds four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding ten thousand dollars ($10,000), or by both, or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding twenty-five thousand dollars ($25,000) or twice the late or unmade payments plus interest, whichever is greater, or by both fine and imprisonment. If the money obtained or withheld equals, or is less than, four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than six months or by a fine not exceeding one thousand dollars ($1,000), or by both.

(c) Any person who violates this division may be assessed a civil penalty by the department of up to two hundred dollars ($200) for the first violation, of up to five hundred dollars ($500) for the second violation, and up to one thousand dollars ($1,000) for the third and any subsequent violation, for each separate violation of this division per day pursuant to a hearing and notice. The department may additionally assess, upon a person who violates this division an amount equal to the department's administrative costs in assessing and collecting the penalty, including any costs of providing a hearing and any related administrative adjudication costs.

(d) The department shall suspend all convenience incentive payments received by any certified recycling center for up to six months, but not less than two months, from the date of a third violation assessed upon that recycling center pursuant to subdivision (c) within a one-year period, commencing upon the effective date of the act amending this section.

(e) This section shall remain in effect 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. 24. Section 14591 of the Public Resources Code, as added by Section 4 of Chapter 117 of the Statutes of 1989, is amended to read:

14591. (a) Except as provided in subdivision (b), in addition to any other applicable civil or criminal penalties, any person convicted of a violation of this division is guilty of an infraction, which is punishable by a fine of one hundred dollars ($100) for each initial separate violation and not more than one thousand dollars ($1,000) for each subsequent separate violation per day.

(b) Every person who, with intent to defraud, submits a false or fraudulent claim for payment pursuant to Section 14573 or 14573.5 or who, with intent to defraud, fails to accurately report the number of beverage containers sold, as required by subdivision (b) of Section 14550, or who, with intent to defraud, fails to make payments as required by Section 14574 or who, with intent to defraud, redeems containers which have already been redeemed or returns redeemed containers to the marketplace for redemption with intent to defraud, or who submits a false or fraudulent claim for convenience incentive payments pursuant to Section 14585, is guilty of fraud. If the money

obtained or withheld exceeds four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than one year or by a fine not exceeding ten thousand dollars ($10,000), or by both, or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding twenty-five thousand dollars ($25,000) or twice the late or unmade payments plus interest, whichever is greater, or by both fine and imprisonment. If the money obtained or withheld equals, or is less than, four hundred dollars ($400), the fraud is punishable by imprisonment in the county jail for not more than six months or by a fine not exceeding one thousand dollars ($1,000), or by both.

(c) Any person who violates this division may be assessed a civil penalty by the department of up to two hundred dollars ($200) for the first violation, of up to five hundred dollars ($500) for the second violation, and up to one thousand dollars ($1,000) for the third and any subsequent violation, for each separate violation of this division per day pursuant to a hearing and notice. The department may additionally assess upon a person who violates this division an amount equal to the department's administrative costs in collecting and assessing the penalty, including any costs of providing a hearing and any related administrative adjudication costs.

(d) This section shall become operative on January 1, 1993.

SEC. 25. The Department of Conservation, in conjunction with other interested state agencies, certified processors, certified recyclers and other certified entities shall do all of the following:

(a) Review regulations adopted by the department regarding inspection procedures to be utilized by all of the following:

(1) Certified Recycling Center.

(2) Certified processors who take physical possession of material.

(3) Other certified entities to ensure that redemption payments and refund values are paid only on California redemption containers.

(b) Review procedures regarding payment claims and reporting requirements under the California Beverage Container Recycling and Litter Reduction Act and develop recommendations for any necessary changes to the existing payment and reporting procedures.

(c) Review current procedures regarding shipping reports which are any of the following:

(1) Submitted by the certified recycling center to the certified processor.

(2) Submitted by the certified processor to the department.

(3) Submitted by curbside programs, dropoff or collection programs and nonprofit dropoff programs to the certified processor or certified recycling centers, as required by the California Beverage Container Recycling and Litter Reduction Act.

(d) Develop recommendations for changes to the existing reporting requirements.

(e) Review the need for the addition of regulations requiring certified recycling centers to be bonded.

SEC. 26. Section 8.5 of this bill incorporates amendments to Section 14541 of the Public Resources Code proposed by both this bill and SB 933. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 1541 of the Public Resources Code, and (3) this bill is enacted after SB 933, in which case Section 8 of this bill shall not become operative.

SEC. 27. 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1343

An act to add and repeal Sections 12804.10, 12804.11, and 15265 to the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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 experienced commercial drivers who have good driving records with additional time to prepare for the examination for the commercial driver's license.

SEC. 2. Section 12804.10 is added to the Vehicle Code, to read:

12804.10. (a) The department shall issue a temporary driver's license to a person licensed to drive a class 1 or class 2 vehicle, who is applying for a license to drive a vehicle in class A or class B if the applicant has failed the examination on the first attempt and meets all of the following requirements:

(1) The person has passed a test of hearing and eyesight as described in Section 12804.

(2) The person is not certified to drive a vehicle under Sections 12517, 12519, 12519.5, 12523.5, 12524, or 12804.3.

(3) The person qualifies for renewal under subdivision (b) of Section 12814.5.

(4) The person has a valid medical certificate as specified in subdivision (c) of Section 12804.

(b) Notwithstanding Section 12506, the temporary driver's license

shall be of six months' duration.

(c) This section shall remain in effect for one year after its effective date, and as of that date is repealed, unless a later enacted statute, which is adopted before that date, deletes or extends that date.

SEC. 3. Section 12804.11 is added to the Vehicle Code, to read:

12804.11. Section 12804.9 does not apply to a volunteer firefighter operating a vehicle of a fire department in response to an emergency call.

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. Section 15265 is added to the Vehicle Code, to read:

15265. This chapter does not apply to a volunteer firefighter operating a vehicle of a fire department in response to an emergency call.

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

In order that experienced commercial drivers will have sufficient time to prepare for examination under the new licensing system that is being implemented, it is necessary that this act take effect immediately.

CHAPTER 1344

An act to amend Section 13826.25 of, and to amend, repeal, and add Section 13826.1 of, the Penal Code, relating to crime.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 13826.1 of the Penal Code is amended to read:

13826.1. (a) There is hereby established in the Office of Criminal Justice Planning, the Gang Violence Suppression Program, a program of financial and technical assistance for district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations which are

primarily engaged in the suppression of gang violence. 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 the office in consultation with the California Council on Criminal Justice, and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) The executive director is authorized to allocate and award funds to cities, counties, school districts, county offices of education, or any consortium thereof, and community-based organizations in which gang violence suppression programs are established in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made on the application of the district attorney, chief law enforcement officer or chief probation officer of the applicant unit of government and approved by the legislative body, on the application of school districts, county offices of education, or any consortium thereof, or on the application of the chief executive of a community-based organization. All programs funded pursuant to this chapter shall work cooperatively to ensure the highest quality provision of services and to reduce unnecessary duplication. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the Gang Violence Suppression Program, be made available to support the activities set forth in this chapter. Funds awarded under this program as local assistance grants shall not be subject to review as specified in Section 14780 of the Government Code.

(d) The executive director shall prepare and issue written program and administrative guidelines and procedures for the Gang Violence Suppression Program, consistent with this chapter. These guidelines shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders, or standards of general application.

(e) Annually, commencing November 1, 1984, the executive director shall prepare a report to the Legislature describing in detail the operation of the statewide program and the results obtained by district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations receiving funds under this chapter and under comparable federally financed awards.

(f) Criteria for selection of district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations to receive gang violence suppression funding shall be developed in consultation with the Gang Violence Suppression Advisory Committee whose members

shall be appointed by the Executive Director of the Office of Criminal Justice Planning, unless otherwise designated.

(g) The Gang Violence Suppression Advisory Committee shall be composed of five district attorneys; two chief probation officers; two representatives of community-based organizations; three attorneys primarily engaged in the practice of juvenile criminal defense; three law enforcement officials with expertise in gang-related investigations; one member from the California Youth Authority Gang Task Force nominated by the Director of the California Youth Authority; one member of the Department of Corrections Law Enforcement Liaison Unit nominated by the Director of the Department of Corrections; one member from the Department of Justice nominated by the Attorney General; one member from the Employment Development Department nominated by the Director of the Employment Development Department; one member from the State Department of Social Services nominated by the Director of the State Department of Social Services; the Superintendent of Public Instruction, or his or her designee; one member of the California School Boards Association; and one representative of a school program specializing in the education of the target population identified in this chapter.

(1) The Gang Violence Suppression Advisory Committee shall assist in the coordination and review of gang prevention, intervention, and suppression programs on a state level. The executive director shall convene the Gang Violence Suppression Advisory Committee as deemed necessary by the committee to perform its duties and responsibilities under this section.

(2) The executive director shall prepare an annual report to the Legislature describing in detail the coordination of the programs described in paragraph (1) administered by state boards and departments and submit recommendations to the Legislature and the Governor regarding statutory strategies for the improvement of those programs. This report, with the recommendations, may be incorporated into the annual report specified in subdivision (e).

(h) This section shall remain operative only until January 1, 1994, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.

SEC. 2. Section 13826.1 is added to the Penal Code, to read:

13826.1. (a) There is hereby established in the Office of Criminal Justice Planning, the Gang Violence Suppression Program, a program of financial and technical assistance for district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations which are primarily engaged in the suppression of gang violence. 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 the office in consultation with the California Council on Criminal Justice, and shall to the greatest extent feasible

be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) The executive director is authorized to allocate and award funds to cities, counties, school districts, county offices of education, or any consortium thereof, and community-based organizations in which gang violence suppression programs are established in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made on the application of the district attorney, chief law enforcement officer or chief probation officer of the applicant unit of government and approved by the legislative body, on the application of school districts, county offices of education, or any consortium thereof, or on the application of the chief executive of a community-based organization. All programs funded pursuant to this chapter shall work cooperatively to ensure the highest quality provision of services and to reduce unnecessary duplication. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the Gang Violence Suppression Program, be made available to support the activities set forth in this chapter. Funds awarded under this program as local assistance grants shall not be subject to review as specified in Section 14780 of the Government Code.

(d) The executive director shall prepare and issue written program and administrative guidelines and procedures for the Gang Violence Suppression Program, consistent with this chapter. These guidelines shall set forth the terms and conditions upon which the Office of Criminal Justice Planning is prepared to offer grants of funds pursuant to statutory authority. The guidelines do not constitute rules, regulations, orders, or standards of general application.

(e) Annually, commencing November 1, 1984, the executive director shall prepare a report to the Legislature describing in detail the operation of the statewide program and the results obtained by district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations receiving funds under this chapter and under comparable federally financed awards.

(f) Criteria for selection of district attorneys' offices, local law enforcement agencies, county probation departments, school districts, county offices of education, or any consortium thereof, and community-based organizations to receive gang violence suppression funding shall be developed in consultation with the Gang Violence Suppression Advisory Committee whose members shall be appointed by the Executive Director of the Office of Criminal Justice Planning, unless otherwise designated.

(g) The Gang Violence Suppression Advisory Committee shall be composed of five district attorneys; two chief probation officers; two representatives of community-based organizations; three attorneys

primarily engaged in the practice of juvenile criminal defense; three law enforcement officials with expertise in gang-related investigations; one member from the California Youth Authority Gang Task Force nominated by the Director of the California Youth Authority; one member of the Department of Corrections Law Enforcement Liaison Unit nominated by the Director of the Department of Corrections; one member from the Department of Justice nominated by the Attorney General; the Superintendent of Public Instruction, or his or her designee; one member of the California School Boards Association; and one representative of a school program specializing in the education of the target population identified in this chapter.

(h) This section shall be operative January 1, 1994.

SEC. 3. Section 13826.25 of the Penal Code, is amended to read:

13826.25. The Office of Criminal Justice Planning through its programs established under Title 1.5 (commencing with Section 11500) shall provide special training for prosecutors in the areas of gang violence, vertical prosecution, gang identification, and witness intimidation.

This section shall become inoperative on July 1, 1993, unless a later enacted statute which becomes effective on or before July 1, 1993, deletes or extends that date. This section shall remain in effect only until January 1, 1994, and on that date is repealed unless a later enacted statute which becomes effective on or before January 1, 1994, deletes or extends that date.

CHAPTER 1345

An act to add Article 7.5 (commencing with Section 45350) to Chapter 5 of Part 25 of the Education Code, relating to teacher assistants, and making an appropriation therefor.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

I am deleting the $50,000 appropriation contained in Section 3 and the $70,000 appropriation contained in Section 4 of Senate Bill No 156

This bill would establish a two-year, Associate of Arts teacher assistant degree program within the California Community Colleges to train teacher assistants for grades 1-6, and requires the Commission on Teacher Credentialing to establish an examination and certification process for teacher assistants.

The appropriations contained in this bill are for the 1990–91 Fiscal Year Appropriating funds for a future fiscal year is contrary to state fiscal practices where costs are funded on an annual basis It would be more appropriate to consider funding the provisions of this bill during the budget process for Fiscal Year 1990–91.

With this deletion, I approve Senate Bill No 156.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. The Legislature finds and declares as follows:

(a) California's pupil-teacher ratio is higher than that of any other state.

(b) California's public school teachers in grades 1 to 3, inclusive, are each commonly assigned the responsibility for educating 30 pupils in their self-contained classrooms.

(c) California's system of public education does not currently provide for the use of trained, noncertificated personnel who are specifically educated to assist the classroom teacher with instruction in designated subject areas.

(d) Whereas any reduction in the current pupil-teacher ratio will increase the need for more school facilities, thereby exacerbating the current shortage of classrooms, the adult-pupil ratio can be halved in California's public schools by the use of trained teacher assistants, operating within the classroom of a certificated teacher under the direction of that teacher.

(e) In addition, the teacher assistant program set forth in this act will provide an incentive to instructional paraprofessionals, including instructional aides and teacher assistants, to complete education and training that would lead to a teaching credential.

(f) It is the intent of the Legislature that the employment of trained teacher assistants not result in the supplanting or displacement of any persons employed as teacher aides.

SEC. 2. Article 7.5 (commencing with Section 45350) is added to Chapter 5 of Part 25 of the Education Code, to read:

Article 7.5. Teacher Assistants

45350. The purposes of this article include the following:

(a) To enhance the teaching of reading, language arts, mathematics, social science, science, and other basic academic subjects to general education pupils in grades 1 to 6, inclusive.

(b) To begin to reduce the impact of large classes in grades 1 to 6, inclusive, through the use of trained teacher assistants, operating within the classroom of a certificated teacher under the direction of that teacher.

(c) To develop, in persons who want to be teacher assistants, competency in specific academic subjects that are part of the curriculum in grades 1 to 6, inclusive, and in child development theory. In order to qualify as a teacher assistant for purposes of this article, a person shall meet both of the following conditions:

(1) Successful completion of a two-year course of study at a California community college, pursuant to which the applicant has been awarded an Associate of Arts, Teacher Assistant degree.

(2) Passage of an examination developed and administered for this purpose by the Commission on Teacher Credentialing.

45351. (a) No later than June 30, 1990, the Office of the Chancellor of the California Community Colleges shall issue requests for proposal from community college districts for the establishment of an Associate of Arts, Teacher Assistant program. The requests for

proposal shall describe the requirements set forth in subdivision (c), and shall be developed in consultation with representatives of the Superintendent of Public Instruction, the President of the University of California, the Chancellor of the California State University, the Chancellor of the California Community Colleges, the Executive Director of the California Postsecondary Education Commission, the Commission on Teacher Credentialing, the statewide Academic Senate for Community Colleges, and the President of the Association of Independent Colleges and Universities. That program shall include, but not necessarily be limited to, the two-year course of study described in Section 45350 and the awarding of an Associate of Arts, Teacher Assistant degree.

(b) The chancellor shall select two community college districts from separate geographic areas of this state for the purposes of this section, and shall allocate to each of those districts for the 1990–91 school year a planning grant of not less than twenty-five thousand dollars ($25,000).

(c) Each of the community college districts selected and funded under this section shall do all of the following:

(1) Implement the Associate of Arts, Teacher Assistant program in one or more community colleges, commencing with the 1991–92 school year.

(2) Ensure that each student enrolled in the program shall work under the direct supervision of a credentialed classroom teacher.

(3) Design the program to ensure that credit hours earned under the program at any community college are transferable to teacher preparation programs conducted at California State University campuses in the same region as that community college.

(4) No later than October 1, 1993, collect, and make available to the California Postsecondary Education Commission for purposes of the evaluation described in Section 45355, the following data for the 1991–92 and 1992–93 school years:

(A) The number of persons who enrolled in the program, and the number of persons who completed the program.

(B) Demographic information concerning those persons.

(C) The number and percentage of graduates of the program who pass the examination described in subdivision (c) of Section 45350.

(D) The number and percentage of graduates of the program who have obtained employment as teacher assistants, as reported pursuant to Section 45353.

45352. No later than June 30, 1991, the Commission on Teacher Credentialing shall adopt policies, procedures, and regulations as it deems necessary and appropriate for the administration of an examination pursuant to subdivision (c) of Section 45350.

45353. Teacher assistants, as described in this article, shall not be deemed to be teachers for any purpose under this code.

45354. The Commission on Teacher Credentialing shall levy a fee for the issuance and renewal of teacher assistant licenses. The fee for the issuance or renewal of the teacher assistant license shall be

twenty-five dollars ($25). In subsequent years, the Commission on Teacher Credentialing may set a different fee, but in no case shall the fee exceed forty-five dollars ($45) without the express approval of the Legislature.

45355. Annually, as part of the budget review process, the Department of Finance and the Legislative Analyst shall jointly determine the amount of the examination fee that would be sufficient to generate the revenues necessary to maintain and administer the examination described in Section 45350, and shall report to the Legislature the amount determined.

45356. The State Department of Education shall, in the 1991–92 and 1992–93 school years, and thereafter as it may deem necessary, coordinate workshops between the community college districts that operate Associate of Arts, Teacher Assistant programs, the California State University, and elementary schools located within those community college districts, regarding changes in instructional methodology that may be necessary to ensure the effective use of teacher assistants.

45357. No later than June 30, 1994, the California Postsecondary Education Commission shall complete an evaluation of the Associate of Arts, Teacher Assistant program, as operated in the two community college districts selected pursuant to Section 45351, which shall include, but need not be limited to, the data set forth in paragraph (3) of subdivision (c) of Section 45351, and shall report the results of that evaluation, together with its recommendations for program improvements, if any, to the Governor, the Legislature, the Board of Governors of the California Community Colleges, the Trustees of the California State University, and the Superintendent of Public Instruction.

45358. No later than June 30, 1994, the Superintendent of Public Instruction shall complete an evaluation of the use of teacher assistants pursuant to this article in elementary schools in this state, the scope of which evaluation shall include the extent of improvement in the performance of pupils in classes using teacher assistants, as measured by the results of academic performance testing. On or before that date, the superintendent shall report the results of that evaluation, together with recommendations for program improvements, if any, to the Governor, the Legislature, the Board of Governors of the California Community Colleges, the Trustees of the California State University, and the Commission on Teacher Credentialing.

SEC. 3. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges for allocation for the 1990–91 fiscal year, for the planning grants authorized under subdivision (b) of Section 45351 of the Education Code.

SEC. 4. The sum of seventy thousand dollars ($70,000) is hereby appropriated from the General Fund to the Commission on Teacher Credentialing for the 1990–91 fiscal year, for the development of

policies, procedures, and regulations as provided for under Section 45352 of the Education Code.

CHAPTER 1346

An act to amend Sections 50712.5, 50735, 50748, 50771.1, and 50805 of the Health and Safety Code, and to amend Item 2240-001-001 of Section 2.00 of the Budget Act of 1989, Chapter 93 of the Statutes of 1989, relating to housing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

I am reducing the appropriation contained in Section 6, Item 2240-001-001 of Senate Bill No 480 from $6,522,000 to $6,521,000 by reducing· (d) 50 01—Administration from $7,974,000 to $7,973,000, and by deleting Provision 1

This bill would make various programmatic changes to the Rental Housing Construction Program to ensure that the program is managed in a sound, efficient and effective manner This bill would additionally establish, on a permanent basis, 9 5 positions that are currently authorized on a limited-term basis via the 1989 Budget Act for administration of the Department of Housing and Community Development's bond-financed programs

For purposes of establishing these positions on a permanent basis, the bill displays the Department's Budget Act Support Item 2240-001-001 However, the bill fails to reflect the item as it appeared in the final, enacted budget. Therefore, to ensure conformity and consistency with my earlier actions on the 1989 Budget Act, I am reducing Item 2240-001-001 by $1,000 and deleting Provision 1 which links the salary of the Public Affairs Manager to the Department's submission of a plan to the Legislature related to improving the sensitivity of various department personnel to the issue of the homelessness My Administration, including the Department of Housing and Community Development, is aware of the needs of homeless Californians and is attempting to provide needed services to the homeless in a systematic and compassionate manner

With this reduction, I approve Senate Bill No 480.

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 50712.5 of the Health and Safety Code is amended to read:

50712.5. (a) The Department of Housing and Community Development, through its Office of Migrant Services, pursuant to the authority granted in subdivision (n) of Section 50406 and Section 50710 shall assist in the development of at least 100 family units in migrant farm labor centers. The department shall first encourage the development of the family units in migrant farm labor centers in the Counties of Imperial, San Diego, Riverside, and Madera. On or before September 30, 1986, if the department determines in the case of the County of Imperial, San Diego, Riverside, or Madera that available federal, state, and local contributions and funds are not adequate, or that for other reasons it is infeasible to develop the family units in centers in any of these designated counties, the department shall offer the assistance authorized by this section in

any county or counties where the department determines there is a substantial unmet need for migrant farm labor housing.

(b) The department shall use the funds appropriated by the act adding this section, during the 1985–86 Regular Session. and any excess funds appropriated for the purposes of the Office of Migrant Services by Chapter 111 of the Statutes of 1985 or any subsequent acts, to maximize the utility of any other local, federal, state or private funds or other assistance made available for the purposes of this section. These appropriated funds may be used for costs including, but not limited to, the following items:

(1) Predevelopment costs incurred in the process of securing construction or long-term financing such as site development and architectural, engineering, or legal expenses, or construction costs, including construction interest, or both. These costs shall not be subject to reimbursement from construction or permanent financing, as the case may be, if the reimbursement would contribute to, or result in, rents substantially in excess of those in other migrant farm labor centers assisted by the Office of Migrant Services, as determined by the department.

(2) A grant or deferred payment loan which may be forgiven, matching or supplementing the permanent financing or grant made available by a federal, state, or local housing assistance program.

(3) Operating cost reductions to the extent necessary to ensure that the rents in the migrant farm center are not substantially in excess of those in other migrant farm labor centers operated by the Office of Migrant Services.

(c) The department shall seek the maximum possible contribution of funds, land, and other incentives from local, federal, and private sources for all the purposes described in subdivision (b). The expenditure of funds authorized by this section shall not be used for any migrant farm labor center unless the department determines that it is likely that at least 75 percent of the final development cost of that center will be provided as a grant or a loan, or both, as contributions of funds, land, and other incentives by any combination of local, federal, and private sources.

(d) To the extent that any migrant farm labor center assisted pursuant to this section is financed or otherwise assisted by the United States Farmers Home Administration, and to the extent the Farmers Home Administration requires compliance with construction, operating, term of use, or residency standards which differ from those required by the department pursuant to regulations adopted to implement and interpret this chapter, those Farmers Home Administration standards shall supersede the department's regulations.

(e) If all the development costs of any migrant farm labor center assisted pursuant to this section are provided by federal, state, or local grants, and if no funds are available from any federal, state, or local service to write-down operating costs, the department may approve rents for that center which are in excess of rents charged in

other centers assisted by the Office of Migrant Services. However, prior to approving these rents, the department shall consider the adequacy of evidence presented by the agency operating the center that the rents reimburse actual, reasonable, and necessary costs of operation and that any reserve funds are not in excess of actual needs anticipated within the next three years.

SEC. 1.5. Section 50735 of the Health and Safety Code is amended to read:

50735. The following definitions shall apply to all activities conducted pursuant to this chapter. Except as otherwise provided in this article or unless the context otherwise requires, the definitions contained in Chapter 2 (commencing with Section 50050) of Part 1 of this division shall also apply to this chapter.

(a) "Assisted unit" means a unit which is affordable to an eligible household as a result of a payment made by the department pursuant to Article 2 (commencing with Section 50745), 3 (commencing with Section 50755), 4 (commencing with Section 50765) or 6 (commencing with Section 50771.1), or as a result of establishment of, or assistance from, an annuity trust fund or both. The department shall adopt regulations which establish a method for computing rents for eligible households.

(b) "Below-market interest financing" means any of the following:

(1) A long-term loan made by the agency with below-market interest, as defined by Section 50056.

(2) A long-term loan made by a local finance entity at a below-market interest rate no higher than that established from time to time by the department, provided such rate shall not exceed by more than 1½ percent the interest rate on long-term loans, if any, made by the agency for rental housing development proposals being submitted or processed for department assistance under this chapter at the same time

(3) The use of subsidies, assistance, or financing, other than as provided in paragraphs (1) and (2), which reduce rent levels by an amount equivalent to that enabled by long-term loans at the interest rate established for purposes of paragraph (2).

(4) Subsidies, assistance, or financing provided to the sponsor by or through the agency or local finance entity and which is a loan made at below-market interest by an agency of the federal government.

(c) "Development costs" means the aggregate of all costs incurred in connection with construction of a rental housing development pursuant to this chapter, including (1) the cost of land acquisition, whether by purchase or lease, (2) the cost of construction, (3) the cost of overhead including architectural, legal, and accounting fees incurred in connection with the construction of the rental housing development, (4) the cost of related offsite improvements, such as sewers, utilities, and streets, and (5) the cost of necessary and related onsite improvements. The department shall

adopt regulations consistent with this section specifying the expenses qualifying as development costs for which a payment may be made pursuant to Section 50745.

(d) "Eligible households" means lower income households, as defined by Section 50079.5, including very low income households, as defined by Section 50105.

(e) "Local finance entity" means a redevelopment agency, housing authority, duly constituted governing body of an Indian rancheria, city, county, or city and county, or any combination thereof, which, in connection with the program established pursuant to this chapter, provides or utilizes financing, at below-market interest or the equivalent under subdivision (b) of Section 50745, for development of rental housing developments eligible for assistance under this chapter.

(f) "Rental housing development" means a development of five or more rental or cooperative units, on one or more sites and includes a mobilehome park with five or more mobilehome spaces.

(g) "Sponsor" means any individual, joint venture, partnership, limited partnership, trust, corporation, cooperative, local public entity, duly constituted governing body of an Indian rancheria, or other legal entity, or any combination thereof, certified by the department and the agency or the department and a local finance entity as the case may be, to own and manage or construct a rental housing development assisted pursuant to this chapter. A sponsor may be organized for profit or limited profit or be nonprofit.

SEC. 2. Section 50748 of the Health and Safety Code is amended to read:

50748. (a) The department may establish and administer an annuity fund, with respect to rental housing developments assisted under this article or Article 3 (commencing with Section 50755) or Article 4 (commencing with Section 50765) for the purpose of reducing rent levels to ensure occupancy by eligible households pursuant to Sections 50736 and 50739. The annuity funds shall be structured so that the principal and interest accumulated thereon is not depleted prior to the expiration of the agreements or contracts required by Section 50749.

(b) Payments made by the department pursuant to this section shall not constitute a subsidy under subdivision (b) of Section 50745, and shall not constitute an advance payment within the meaning of state law restricting advance payments under state contracts.

(c) The department shall require annual reports on the use of annuity funds and such audits as may be required to ensure the proper use of moneys from the annuity fund. The department shall review all complaints received concerning such trust funds and shall have all powers necessary to assure the lawful application of such funds.

(d) When the amount of moneys made payable from an annuity fund pursuant to this section exceeds the amount necessary to ensure that eligible households in a rental housing development assisted

under this chapter are paying affordable rents, or if payments from the annuity fund become unnecessary for such purpose, the department may by contract (1) require that such unneeded moneys be paid into the Rental Housing Construction Incentive Fund or (2) authorize use of such moneys to reduce rents to an affordable level for additional eligible households in the rental development.

(e) Not less than 20 percent of the moneys appropriated for the purposes of this chapter shall be utilized pursuant to this section. However, moneys transferred to the Rental Housing Construction Fund pursuant to subdivision (d) shall be used for any purpose authorized by this chapter.

SEC. 3. Section 50771.1 of the Health and Safety Code is amended to read:

50771.1. For the purpose of providing deferred payment loans pursuant to this chapter for the development costs of rental housing developments utilizing moneys transferred to the Rental Housing Construction Fund pursuant to paragraph (1) of subdivision (a) of Section 53130 and paragraph (1) of subdivision (b) of Section 53130, the following special provisions shall prevail over conflicting provisions of this chapter:

(a) (1) Sponsor applications shall be accepted by the department at any time. Awards of funds shall be based on a quarterly ranking of sponsor applications. In making this ranking, notwithstanding Sections 50737 and 50737.5, priority shall be given to projects which (A) maximize program benefits to eligible households, as defined in Section 50105 with the lowest incomes, (B) maximize program benefits to eligible households needing assisted units with three or more bedrooms, (C) are located in areas where the housing need is great, as determined by the department, taking into consideration, among other factors, variations in local development costs, low vacancy rates, high market rents, and long waiting lists for subsidized housing, (D) complement the implementation of an existing housing program, (E) maximize private, local, and other funding sources, (F) are economically feasible given local market conditions, and (G) maximize the number of units which can be assisted under the program, relative to variances in market conditions for the development of rental housing. Subparagraph (B) above does not apply to applications for residential hotels.

(2) All loans shall be made directly from the department to the housing sponsor which applies to the department and will own, operate, and develop the housing development. The sponsor shall notify the local legislative body of its loan application prior to the funding award.

(3) A sponsor may apply for awards for one or more rental housing developments.

(4) The department shall evaluate the capability of the sponsor to own, construct, and manage the rental housing development.

(b) (1) A rental housing development may utilize any combination of federal, state, local, and private financial resources

necessary to make the development affordable, for the term of the state's regulatory agreement, to eligible households.

(2) (A) Loans to sponsors of housing developments shall be for a term not less than 40 years. After 30 years from the time the loan is made, the sponsor shall begin to repay the loan in accordance with a payment plan, as determined by the department, that will maintain the rents affordable to eligible households.

(B) The term of the loan and the time for repayment may be extended by the department for additional 10-year terms as long as the rental housing development is operated in a manner consistent with the regulatory agreement and the sponsor requires an extension in order to continue to operate in a manner consistent with this chapter.

(C) Loans provided under this section shall bear an interest rate of 3 percent per annum. The department, by regulations, shall establish the conditions under which the interest may be reduced, waived, or deferred. At the request of the sponsor, the department may charge a higher interest rate.

(3) (A) Development costs shall include reasonable consulting fees, and other reasonable administrative expenses in connection with the planning and execution of the rental housing development, as determined by the department, and initial funding of emergency reserves, as required by the department. The development costs also shall further include the acquisition and completion of construction of a rental housing development where construction has halted due to financial distress, as determined by the department.

(B) A rental housing development shall include residential hotels, as defined in subdivision (b) of Section 50669, and group homes.

(4) The sponsor shall maintain an emergency reserve to defray unanticipated cost increases or revenue shortfalls to maintain the fiscal integrity of the rental housing development and maintain affordable rents for eligible households.

(5) The department, by regulation, shall specify minimum equity requirements not to exceed 10 percent of total project development costs. This requirement does not apply to proposed projects where assisted units are less than 80 percent of the total number of units.

The department, by regulation, shall define "equity" for the purposes of this section, which shall include, but shall not be limited to, cash, real property, items of personal property having monetary value contributed by the sponsor and applied toward project costs, and the capitalized value of any exemption from local taxes on real property.

(6) The department, by regulation, may specify per-unit loan limits and circumstances under which it may grant exceptions to, or variances from, these limits. The loan amount shall not exceed either 100 percent of the development costs attributable to the assisted units or the amount necessary to maintain affordable rents for the assisted units, as determined by the department.

(c) (1) Initial rents, including a reasonable utility allowance, for

assisted units reserved for occupancy by very low income households, and for all assisted units in residental hotels and group homes, shall not exceed 30 percent of 35 percent of area median income, adjusted by unit size. Initial rents, including a reasonable utility allowance, for assisted units reserved for occupancy by lower income households shall not exceed 30 percent of 60 percent of area median income, adjusted by unit size. The department, by regulation, shall specify the method for adjusting rents by unit size and for computing allowances for utility costs.

(2) The department shall develop an inflation index reflecting the annual anticipated changes in rental housing development operating costs from a base year. The inflation index shall be used by the sponsor to adjust the initial rent of each unit occupied by an eligible household to determine the annual rent. Any sponsor may appeal to the department for a greater adjustment in rents necessary to ensure the fiscal integrity of the housing development. If the department does not respond within 60 days, the request shall be deemed approved. A 30-day written notice shall be given to each eligible household prior to an adjustment in the amount of rent.

(3) Upon prior written approval by the department, a sponsor may set income limits for occupancy of assisted units designated for lower income households at a level below the limit specified in Section 50079.5. If a tenant's income exceeds this income limit established by the sponsor, but does not exceed the limit specified in Section 50079.5, that fact alone shall neither constitute cause for the tenant's eviction, nor be a violation of the sponsor's loan agreement.

(4) The monthly rent including a reasonable utility allowance may be reduced by the sponsor, to make the units affordable to the lowest income household possible as long as the project remains economically feasible.

(5) (A) If a household's income exceeds the standard pursuant to which it was accepted for tenancy, that fact alone shall neither constitute cause for the household's immediate eviction nor be a violation of the owner's or sponsor's loan agreement.

(B) If, after annual income certification, an assisted unit becomes occupied by a household which does not meet the income limits specified in Section 50105, that household shall be permitted to continue to occupy that assisted unit. When there is a vacancy in an assisted unit formerly occupied by a household which meets the income limits specified in Section 50079.5, that unit shall be rented to a household which meets the income limits specified in Section 50105.

(C) If, after annual income certification, an assisted unit becomes occupied by a household which does not meet the income limits specified in Section 50079.5, that household shall be provided a six-month notice of termination. That period may be extended for an additional six-month period in high cost rental areas with low vacancy rates, as determined by the department. That household shall have first right of refusal to occupy any nonassisted unit which

becomes available during both periods.

(D) In the case of limited equity housing cooperatives, the provisions of subparagraph (C) shall apply, except that tenants whose incomes, upon recertification, exceed the limit specified in Section 50079.5 shall not be required to vacate their units. Instead, and upon six months' notice, these tenants shall be required to pay rent in an amount equal to the market rate rent for comparable units, as determined by the department. When a tenant's income exceeds the limit specified in Section 50079.5, the next available membership share for occupancy in a comparable unit shall be sold to a household with an income at or below this limit.

(d) (1) The department may contract with the sponsor to pay all or a portion of the development costs incurred in connection with the construction of a rental housing development consistent with the requirements of this article. The department shall include such provisions in the contract as are necessary to ensure compliance with the requirements of the program.

Any rental housing development assisted pursuant to this article shall be governed by a regulatory agreement between the sponsor and the department. The regulatory agreement shall be recorded or referenced in a recorded document in the office of the county recorder for the county in which the rental housing development is located. The regulatory agreement shall contain at least all of the following:

(A) Restrictions on occupancy of dwelling units within the rental housing development, to meet the requirements of Section 50736 and this section for a period of at least 40 years.

(B) Provisions governing standards for tenant selection to ensure occupancy by eligible households of very low and low income for the term of the regulatory agreement.

(C) Provisions governing occupancy standards and rental agreements.

(D) Provisions for setting initial rents and rent increases consistent with paragraph (1) of subdivision (c) of Section 50771.1. Prior to the time any rent increase is effective, the sponsor shall notify every affected tenant, in writing, of the availability of informal meetings with the sponsor to review the proposed rent increase. Each tenant, upon request, shall be provided the information submitted to the department pursuant to this subdivision.

(E) A requirement that the sponsor submit to the department for review and approval, annual operating budgets and periodic reports, which shall at a minimum include information on the fiscal condition of the rental housing development, the maintenance of the development, and the number of units occupied by eligible households.

(F) Provisions limiting distribution of sponsor's earnings as specified in paragraph (4)

(G) A provision which specifies the conditions under which the department and any intended beneficiary may enforce the

regulatory agreement.

(H) Any other provisions necessary to carry out the purposes and to exercise the powers granted by this chapter.

The regulatory agreement shall be recorded against the property and shall be deemed a covenant running with the land and shall be binding upon the sponsor and any and all successors in interest in case of sale or transfer of the rental housing development for the original term of the loan, and any extensions thereof, regardless of any prepayment of the loan.

The department, by regulation, may require such other documents, instruments, and agreements as are reasonable and necessary to ensure compliance with the program requirements.

(2) The contract for the award of development funds to be provided as construction financing for a rental housing development shall contain at a minimum the provisions specified in Section 50766, excluding therefor subdivisions (j), (k), and (l).

(3) All state contracts and regulatory or development agreements subject to this article shall contain provisions requiring that assisted units remain affordable to eligible households for 40 years plus any permitted extension.

(4) A nonprofit sponsor, other than a governmental agency, may maintain a debt service coverage ratio of not more than 115 percent and distribute earnings from both assisted and nonassisted units in an amount no greater than 8 percent of the nonprofit sponsor's actual investment in the rental housing development. A for-profit sponsor may choose between the following options:

(A) It may distribute earnings from both assisted and nonassisted units in an annual amount no greater than 8 percent of its actual investment in the rental housing development.

(B) It may forego distribution of earnings from assisted units, and not be subject to any limitation on the amount of distributions it receives from nonassisted units.

(e) Where loans will be used in conjunction with federal and other state housing assistance or tax credit and a conflict exists between the other state and federal program requirements and this chapter regarding the test for determining a qualified low-income housing project, the requirements of the Rental Housing Construction Program may be waived only to the extent necessary to permit the federal or other state financial participation or eligibility for tax credits.

(f) (1) The department shall establish specific minimum development criteria to (A) ensure that the useful life of the rental housing development is at least equal to the term of the loan; (B) enhance the physical security of the tenants; (C) minimize long-term operating and maintenance costs; and (D) ensure that project design features and amenities are modest.

(2) No energy standards shall be required of any housing development in excess of the energy standards required for housing developments financed by conventional funding sources.

(3) The department shall employ a licensed architect or an experienced building inspector, or both, to review plans, inspect, and monitor construction of, rental housing developments.

(g) A sponsor of a housing development may receive payments from the annuity fund pursuant to Section 50738 to the extent that there are unobligated moneys available in the fund.

(h) The department shall establish an emergency reserve account in the Rental Housing Construction Fund established pursuant to Section 50740 equal to 3 percent of the moneys transferred to subdivision (a) of Section 53130.

Moneys transferred to the fund pursuant to subdivision (a) of Section 53130 shall not be subject to the requirements of Section 50770 or be used to ensure economic feasibility or enable construction pursuant to Section 50738. Notwithstanding the provisions of Sections 53130 and 53133, the department may expend moneys in the account to defray unanticipated cost increases or revenue shortfalls not covered by a rental housing development emergency reserve to the extent necessary to maintain the fiscal integrity of a rental housing development and maintain affordable rents for eligible households.

Notwithstanding the provisions of Section 53130 which limit the use of allocated proceeds with respect to project operating costs, and Section 53133, the department may use any amounts available in the account for the purpose of curing or avoiding a sponsor's defaults on the terms of any loan or other obligation which will jeopardize the financial integrity of a rental housing development or the department's security in the rental housing development. The payment or advance of any funds by the department pursuant to this subdivision shall be solely within the discretion of the department, and no sponsor shall be entitled to, or have any right to, payment of these funds. Funds advanced pursuant to this subdivision shall be added to the loan amount secured by the deed of trust and shall be payable to the department upon demand.

SEC. 4. 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. The term "emergency shelter" includes shelters that provide temporary housing for up to 180 days to homeless families or individuals who are concurrently participating in a program to obtain permanent shelter and income, including those family members or individuals who are employed.

(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.

(4) That not less than 20 percent of the moneys in the Emergency Housing and Assistance Fund shall be allocated to nonurban counties, during any given fiscal year. For the purposes of this subdivision, nonurban county shall mean any county with a population of less than 200,000 as published in the Population Estimates of California Cities and Counties, E-1, prepared by the Department of Finance, Population Research Unit.

(5) Funds allocated pursuant to paragraph (3) to a nonurban county may be used to pay the cost of leasing or renting individual units to be used for emergency shelters. No more than 15 percent of the funds allocated to a region other than a nonurban county shall be expended for this purpose. This limitation shall also apply to funds allocated pursuant to subdivision (a) or (b) of Section 53130.

(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. 5. 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. The term "emergency shelter" includes shelters that provide temporary housing for up to 180 days to homeless families or individuals who are concurrently participating in a program to obtain permanent shelter and income, including those family members or individuals who are employed.

(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 less than 20 percent of the moneys in the Emergency Housing and Assistance Fund shall be allocated to nonurban counties, during any given fiscal year. For the purposes of this subdivision, nonurban county shall mean any county with a population of less than 200,000 as published in the Population Estimates of California Cities and Counties, E-1, prepared by the Department of Finance, Population Research Unit.

(4) Funds allocated pursuant to paragraph (3) to a nonurban county may be used to pay the cost of leasing or renting individual units to be used for emergency shelters. No more than 15 percent of the funds allocated to a region other than a nonurban county shall be expended for this purpose. This limitation shall also apply to funds allocated pursuant to subdivision (a) or (b) of Section 51130.

(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.

(e) The last sentence of subdivision (b) of Section 53130 shall apply to this chapter.

SEC. 6. Item 2240-001-001 of Section 2.00 of the Budget Act of 1989, Chapter 93 of the Statutes of 1989, is amended to read:

2240-001-001—For support of Department of Housing and Community Development	6,522,000
Schedule:	
(a) 10-Codes and Standards Program	18,587,000

(b) 20-Community Affairs Program....	14,681,000
(c) 30-Housing Policy Development Program.....	1,343,000
(d) 50.01-Administration	7,974,000
(e) 50.02-Distributed Administration..	—7,974,000
(f) Reimbursements	—6,761,000
(g) Amount payable from the Mobilehome Park Revolving Fund (Item 2240-001-245)	—2,722,000
(h) Amount payable from the Manufactured Home License Fee Account, General Fund (Item 2240-001-451)	—1,909,000
(i) Amount payable from the Mobilehome Park Purchase Fund (Item 2240-001-530)	—323,000
(j) Amount payable from the Rural Predevelopment Loan Fund (Item 2240-001-635)	—189,000
(k) Amount payable from the Mobilehome-Manufactured Home Revolving Fund (Item 2240-001-648)	—12,301,000
(*l*) Amount payable from the Self-Help Housing Fund (Item 2240-001-813)	—169,000
(m) Amount payable from the Legalization Impact Assistance Grant (Allocation from Control Section 23.50)	—329,000
(n) Amount payable from the Federal Trust Fund (Item 2240-001-890) ..	—1,564,000
(o) Amount payable from the Housing Rehabilitation Loan Fund (Item 2240-001-929)	—562,000
(p) Amount payable from the Homeownership Assistance Fund (Item 2240-001-936)	—224,000
(q) Amount payable from the Rental Housing Construction Fund (Item 2240-001-938)	—650,000
(r) Amount payable from the Urban Predevelopment Loan Fund (Item 2240-001-980)	—234,000
(s) Amount payable from the Emergency Housing and Assistance Fund (Item 2240-001-985)	—152,000

Provisions:

1. One-half of the $65,000 appropriated to fund the Department of Housing and Community Deve-

lopment's Public Affairs Officer position shall be available for the period July 1, 1989, through December 31, 1989. The remainder of the funds appropriated for this purpose shall only be available for expenditure during the period January 1, 1990, through June 30, 1990, if the department submits a plan to the Joint Legislaive Budget Committee and the chairpersons of the legislative fiscal committees to improve the sensitivity of the director and key department staff, including all exempt personnel, to the issue of homelessness. This plan shall be submitted to the chairpersons not later than December 1, 1989.

SEC. 7. Section 5 incorporates amendments to Section 50805 of the Health and Safety Code proposed by both this bill and SB 995. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 50805 of the Health and Safety Code, and (3) this bill is enacted after SB 995, in which case Section 50805 as amended by Section 4 of this bill, shall remain operative only until operative date of SB 995, at which time Section 5 of this bill shall become operative.

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:

This act extends regulatory authority necessary to implement the Housing and Homeless Bond Act of 1988 and the California Earthquake and Housing Rehabilitation Bond Act of 1988, and makes necessary changes to a program of assistance to first-time homebuyers. These housing programs fulfill immediate and critical housing needs throughout California. It is therefore necessary that this act take immediate effect.

CHAPTER 1347

An act to amend Section 17058 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989.]

I am deleting the $25,000 appropriation contained in Section 3 of Senate Bill No 726. This bill, an urgency measure, would amend personal income tax law to continue the state low-income housing tax credits beyond 1990, contingent upon continuation of the federal low-income housing tax credits and require the Legislative Analyst to report to the Legislature concerning the effectiveness of the tax credits The bill appropriates $25,000 to the Joint Legislative Budget Committee to conduct the

evaluation

It is not necessary to appropriate money from the General Fund to conduct this evaluation The Joint Legislative Budget Committee and the Legislative Analyst have sufficient resources to carry out the provisions of this bill

With this deletion, I approve Senate Bill No 726

GEORGE DEUKMEJIAN, Governor

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

SECTION 1. Section 17058 of the Revenue and Taxation Code, as amended by Chapter 46 of the Statutes of 1989, is amended to read:

17058. (a) (1) There shall be allowed as a credit against the amount of net tax (as defined in Section 17039) a state low-income housing credit in an amount equal to the amount determined in subdivision (c), computed in accordance with the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, including the amendments contained in the Technical Corrections and Miscellaneous Revenue Act of 1988, except as otherwise provided in this section.

(2) "Taxpayer" for purposes of this section means the sole owner in the case of an individual, the partners in the case of a partnership, and the shareholders in the case of an S corporation.

(3) "Housing sponsor" for purposes of this section means the sole owner in the case of an individual, the partnership in the case of a partnership, and the S corporation in the case of an S corporation.

(b) (1) The amount of the credit allocated to any housing sponsor shall be authorized by the Mortgage Bond and Tax Credit Allocation Committee, or any successor thereof, based on a project's need for the credit for economic feasibility.

(A) The low-income housing project shall be located in California and shall meet either of the following requirements:

(i) The project's housing sponsor shall have been allocated by the Mortgage Bond and Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

(ii) It shall qualify for a credit under Section 42(h) (4) (B) of the Internal Revenue Code.

(B) The Mortgage Bond and Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code.

(2) (A) The Mortgage Bond and Tax Credit Allocation Committee shall certify to the housing sponsor the amount of tax credit under this section to which the housing sponsor is entitled for each credit period.

(B) In the case of a partnership or an S corporation, the housing sponsor shall provide a copy of the Mortgage Bond and Tax Credit Allocation Committee certification to the taxpayer.

(C) The taxpayer shall attach a copy of the certification to any return upon which a tax credit is claimed under this section.

(D) In the case of a failure to attach a copy of the certification for the year to the return in which a tax credit is claimed under this section, no credit under this section shall be allowed for that year until a copy of that certification is provided.

(E) All elections made by the taxpayer pursuant to Section 42 of the Internal Revenue Code shall apply to this section.

(c) Section 42(b) of the Internal Revenue Code shall be modified as follows:

(1) In the case of any qualified low-income building placed in service by the housing sponsor during 1987, the term "applicable percentage" means 9 percent for each of the first three years and 3 percent for the fourth year for new buildings (whether or not the building is federally subsidized) and for existing buildings.

(2) In the case of any qualified low-income building placed in service by the housing sponsor after 1987 (for new buildings whether or not the building is federally subsidized and for existing buildings), the term "applicable percentage" means either of the following:

(A) For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings which are not federally subsidized for the taxable year, determined in accordance with the requirements of Section 42(b)(2) of the Internal Revenue Code, in lieu of the percentage prescribed in Section 42(b)(1)(A).

(B) For the fourth year, the difference between 30 percent and the sum of the applicable percentages for the first three years.

(d) The term "qualified low-income housing project" as defined in Section 42(c)(2) of the Internal Revenue Code is modified by adding the following requirements:

(1) The taxpayer shall be entitled to receive a cumulative cash distribution from the operation of the qualified low-income housing project in an amount not to exceed 8 percent per annum on the investment in the project. For purposes of this paragraph, the investment in the project shall be equal to the amount of the capital contributions actually paid to the housing sponsor and shall not include any amounts until they are paid on an investor note. The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(2) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term "credit period" as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting "four taxable years" for "10 taxable years."

(2) The special rule for the first taxable year of credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply

to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of the 1988 or 1989 taxable year, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the taxable year in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

(1) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

The total amount for the four-year period of the housing credit dollars allocated in a calendar year to any building shall reduce the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee for the calendar year in which the allocation is made.

(2) Paragraphs (3), (4), (6), and (7) of Section 42(h) of the Internal Revenue Code shall not be applicable to this section.

(g) (1) Except as provided in paragraph (2), the aggregate housing credit dollar amount which may be allocated annually by the Mortgage Bond and Tax Credit Allocation Committee pursuant to this section and Section 23610.5 shall be an amount equal to one dollar and twenty-five cents ($1.25) multiplied by the state population in each year, as established by the Department of Finance.

(2) The portion of the aggregate housing credit dollar amount of the Mortgage Bond and Tax Credit Allocation Committee which is not allocated for each of the calendar years may be carried over to any subsequent calendar years through 1989.

(h) (1) The term "compliance period" as defined in Section 42(i)(1) of the Internal Revenue Code is modified to mean, with respect to any building, the period of 30 consecutive taxable years beginning with the first taxable year of the credit period with respect thereto, subject to the limitation in paragraph (2).

(2) If, after the first 15 years of the compliance period, a qualified low-income housing project is not economically feasible, the housing sponsor shall be entitled to remove one or more low-income units from the set-aside and rent requirements of Section 42(g) of the Internal Revenue Code as is necessary for the project to become economically feasible, provided that once a project is again economically feasible, the housing sponsor designates the net available units as low-income units subject to the set-aside and rent requirements, up to the original number of low-income units, while keeping the project economically feasible.

(3) For purposes of paragraph (2), "economically feasible" means that project revenue equals or exceeds project operating expenses

excluding any return on investment.

(4) For purposes of paragraph (3), "operating expenses" means the reasonable expenses necessary to operate and maintain the project in habitable condition, debt service, taxes, and reasonable reserves. For purposes of this paragraph, debt service shall not include that portion of payments of principal and interest attributable to any excess refinanced principal over the outstanding principal of the loan that was refinanced.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the Mortgage Bond and Tax Credit Allocation Committee and the housing sponsor:

(1) A term equal to the compliance period.

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto.

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

(6) A requirement that the housing sponsor provide the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement with advance notice if the housing sponsor intends to reduce the number of low-income units to make a project economically feasible.

(7) A requirement that the housing sponsor notify the Mortgage Bond and Tax Credit Allocation Committee or its designee and the local agency that can enforce the regulatory agreement if there is a determination by the Internal Revenue Service that the project is not in compliance with Section 42(g) of the Internal Revenue Code.

(8) A requirement that the housing sponsor, as security for the performance of the housing sponsor's obligations under the regulatory agreement, assign the housing sponsor's interest in rents which it receives from the project, provided that until there is a default under the regulatory agreement, the housing sponsor is entitled to collect and retain the rents.

(9) The remedies available in the event of a default under the regulatory agreement that is not cured within a reasonable cure period, include, but are not limited to, allowing any of the parties designated to enforce the regulatory agreement to collect all rents with respect to the project; taking possession of the project and operating the project in accordance with the regulatory agreement until the enforcer determines the housing sponsor is in a position to operate the project in accordance with the regulatory agreement; applying to any court for specific performance; securing the appointment of a receiver to operate the project; or any other relief

as may be appropriate.

(j) In allocating the housing credit, the Mortgage Bond and Tax Credit Allocation Committee shall give priority to qualified low-income housing projects that satisfy the following criteria, which are weighted according to the numerical order of the paragraphs listed below:

(1) Projects that have received government financing or mortgage assistance and are eligible and likely to convert to market-rate rental units.

(2) (A) Projects that commit to providing low-income units for a significantly longer period than the compliance period under this section.

(B) Projects that commit to providing a greater percentage of low-income units than is required under Section 42(g)(1) of the Internal Revenue Code.

(3) Projects that commit to charging rent for low-income units that is less than the rent requirements under Section 42(g)(2) of the Internal Revenue Code.

(4) (A) Projects for which the rate of return on cash investment is less than the rate allowed under this section.

(B) Projects targeted to those groups identified in the California Statewide Housing Plan as having special needs, including projects that ensure that rural areas receive a proportionate share of the housing credits, which share shall in no event be less than 20 percent of the total allocation, including 20 percent of any unallocated credit from prior years as provided in subdivision (m). For the purposes of this paragraph, "rural areas" has the same meaning as defined in Section 50101 of the Health and Safety Code.

(k) Section 42(*l*) of the Internal Revenue Code shall be modified as follows:

The term "secretary" shall be replaced by the term "Mortgage Bond and Tax Credit Allocation Committee."

(*l*) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over to the net tax in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until the credit is used. The credit shall be applied first to the earliest years possible.

(m) The aggregate amount of tax credits granted pursuant to this section and Section 23610.5 shall not exceed thirty-five million dollars ($35,000,000) per year. The Mortgage Bond and Tax Credit Allocation Committee shall not authorize any credit if the total amount of credits authorized in any year under the Personal Income Tax Law and the Bank and Corporation Tax Law exceeds thirty-five million dollars ($35,000,000).

The aggregate amount of credit granted pursuant to this section and Section 23610.5 in 1989 may exceed thirty-five million dollars ($35,000,000) by an amount equal to the unallocated credit from 1987

and 1988.

(n) The credit period with respect to an allocation of credit in 1989 by the Mortgage Bond and Tax Credit Allocation Committee of which any amount is attributable to unallocated credit from 1987 or 1988 shall not begin until after December 31, 1989.

(o) (1) This section shall remain in effect only until December 1, 1990, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (*l*), until the credit has been exhausted.

(2) Notwithstanding paragraph (1), this section shall remain in effect on and after December 1, 1990, for as long as Section 42 of the Internal Revenue Code pertaining to low-income housing credits remains in effect.

SEC. 2. The Legislative Analyst shall evaluate the low-income housing credits allowed by Section 17058 of the Revenue and Taxation Code and make a report of that evaluation to the Legislature on or before May 1, 1990. The report shall include, among other things, information about the number of taxpayers claiming the credits and the effectiveness of the credits in stimulating the development of low-income housing.

SEC. 3. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the General Fund to the Joint Legislative Budget Committee for purposes of conducting the evaluation and report specified in Section 2 of this act.

SEC. 4. This act shall not become operative unless Senate Bill 1290 of the 1989–90 Regular Session is chaptered.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect. However, the provisions of this act shall be applied in the computation of taxes for taxable or income years beginning on or after the first day of the calendar year in which this act becomes effective provided the effective date is more than 90 days prior to the last day of the calendar year. If the effective date is 90 days or less prior to the last day of the calendar year, the provisions of this act shall apply in the computation of taxes for taxable or income years beginning on or after the first day of the calendar year following the effective date.

CHAPTER 1348

An act to amend Sections 8601 and 8622 of, and to add Section 8619 to, the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1 Section 8601 of the Education Code is amended to read:

8601. The Mathematics, Engineering, and Science Achievement (MESA) program is a cooperative effort by secondary and postsecondary educational institutions, working with private industry, to increase the number of students who graduate from college or university with the academic skills needed to gain employment in engineering, mathematics, and science-related professions in California. The goals of the program shall include, but not be limited to, all of the following:

(a) To increase the number of low-income and ethnic minority secondary and community college school students who are adequately prepared in mathematics and science to pursue a mathematics-based course of study in college.

(b) To provide supplemental services at the college and university level which will result in a higher retention rate of low-income and ethnic minority students majoring in engineering, computer science, and other mathematics-based fields.

(c) To increase the number of college and university graduates from ethnic minority backgrounds who secure employment and careers in mathematics-based fields such as engineering, management, and computer service.

(d) To increase the number of college and university graduates from ethnic minority backgrounds who complete doctoral degree programs in engineering, computer science, and other mathematics-based fields, and enter the college and university teaching profession.

SEC. 2. Section 8619 is added to the Education Code, to read:

8619. It is the intent of the Legislature that funding for the Mathematics, Engineering, and Science Achievement (MESA) program, including any expansion of the program to include a community college component, shall be funded through the Budget Act process.

SEC. 3. Section 8622 of the Education Code is amended to read:

8622. This chapter shall become inoperative on June 30, 1995, and, as of January 1, 1996, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1996, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the expansion of the program goals of the Mathematics, Engineering, and Science Achievement (MESA) program in the 1989–90 school year, and in order to extend the program's scheduled termination date from January 1, 1991, to January 1, 1996, it is necessary that this act take effect immediately.

CHAPTER 1349

An act to amend Section 7901 of the Government Code, relating to waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 7901 of the Government Code, as amended by Chapter 83 of the Statutes of 1989, is amended to read:

7901. For the purposes of Article XIII B of the California Constitution and this division:

(a) "Change in California per capita personal income" for a calendar year means the number resulting when the quotient of the California personal income, as published by the United States Department of Commerce in the Survey of Current Business for the fourth quarter of a calendar year divided by the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly determined quotient for the next prior year. For example, the change in California per capita personal income for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the fourth quarter 1979 personal income divided by the January 1, 1980, population, the quotient divided by the fourth quarter 1978 personal income divided by the January 1, 1979, population.

(b) "Change in cost of living" for a calendar year means the number resulting when the United States All Urban Consumer Price Index for the month of March of a calendar year is divided by that index for the month of March of the prior calendar year.

(c) "Change in population" for a local agency for a calendar year means the number resulting when the percentage change in population between January 1 of the next calendar year and January 1 of the calendar year in question, as estimated by the Department of Finance pursuant to Section 2227 of the Revenue and Taxation

Code for each city and county and Section 2228 of the Revenue and Taxation Code for each special district, plus 100, is divided by 100. For example, the change in population for 1979 would equal the percentage change in population between January 1, 1980, and January 1, 1979, plus 100, the sum divided by 100. For purposes of the state's appropriations limit, "change in population" means the number resulting when the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly estimated population for January 1 of the calendar year in question. For example, the change in population for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the January 1, 1980, population divided by the January 1, 1979, population.

(d) "Change in population" for a school district means the change in average daily attendance between the year prior to that for which the appropriations limit is being computed and the year for which the appropriations limit is being computed, using the average daily attendance as defined in Section 7906.

(e) "Change in population" for a community college district means the number resulting when the average daily attendance for the community college district for the current year computed pursuant to Section 84500 of the Education Code is divided by the similarly computed average daily attendance for the previous year.

(f) "Local agency" means a city, county, city and county, special district, authority or other political subdivision of the state, except a school district, community college district, or county superintendent of schools. The term "special district" shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12½ cents per $100 of assessed value for the 1977–78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution.

If a special district levied, or had levied on its behalf, different property tax rates for the 1977–78 fiscal year depending on which area or zone within the district boundaries property was located, it shall be deemed not to have levied a secured property tax rate in excess of 12½ cents per $100 of assessed value if the total revenue derived from the ad valorem property tax levied by or for the district for 1977–78, divided by the total amount of taxable assessed valuation within the district's boundaries for 1977–78, does not exceed 0.00125.

(g) "School district" means an elementary, high school, or unified school district.

(h) "Local jurisdiction" means a local agency, school district, community college district, or county superintendent of schools.

(i) As used in Section 2 and subdivision (b) of Section 3 of Article

XIII B, "revenues" means all tax revenues and the proceeds to a local jurisdiction or the state received from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues as described in subdivision (i) of Section 8 of Article XIII B. For a local jurisdiction, revenues and appropriations shall also include subventions, as defined in Section 7903, and with respect to the state, revenues and appropriations shall exclude those subventions.

(j) (1) "Proceeds of taxes" shall not include proceeds to a local jurisdiction or the state from regulatory licenses, user charges, or user fees except to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service.

(2) "Proceeds of taxes" also does not include the proceeds received by a local jurisdiction from a license tax imposed pursuant to Section 25149.5 of the Health and Safety Code or a tax or fee imposed pursuant to Section 25173.5 of the Health and Safety Code on the operation of a hazardous waste facility, or the proceeds received by a local jurisdiction from a surcharge which is collected by a regional disposal facility, as authorized pursuant to Section 25878 of the Health and Safety Code to the extent that these proceeds of the license tax, tax, fee, or surcharge are expended for costs or increased burdens on local jurisdictions which are associated with the hazardous waste facility or regional disposal facility. These costs or burdens include, but are not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, emergency medical response, law enforcement, air and groundwater monitoring, epidemiological studies, emergency response training, and equipment related to the hosting of the hazardous waste facility or regional disposal facility.

SEC. 2. Section 7901 of the Government Code, as amended by Chapter 83 of the Statutes of 1989, is amended to read:

7901. For the purposes of Article XIII B of the California Constitution and this division:

(a) "Change in California per capita personal income" means the number resulting when the quotient of the California personal income, as published by the United States Department of Commerce in the Survey of Current Business for the fourth quarter of a calendar year divided by the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly determined quotient for the next prior year. For example, the change in California per capita personal income for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the fourth quarter 1979 personal income divided by the January 1, 1980, population, the quotient divided by the fourth quarter 1978 personal income divided by the January 1, 1979, population.

(b) "Change in population" for a local agency, other than a

county, for a calendar year means the number resulting when the percentage change in population between January 1 of the next calendar year and January 1 of the calendar year in question, as estimated by the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code for each city and county and Section 2228 of the Revenue and Taxation Code for each special district, plus 100, is divided by 100. For example, the change in population for 1979 would equal the percentage change in population between January 1, 1980, and January 1, 1979, plus 100, the sum divided by 100. For purposes of the state's appropriations limit, "change in population" means the number resulting when the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly estimated population for January 1 of the calendar year in question. For example, the change in population for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the January 1, 1980, population divided by the January 1, 1979, population.

A city or special district may choose to use the change in population within its jurisdiction or within the county in which it is located. For a special district located in two or more counties, the special district may choose to use the change in population in the county in which the portion of the district is located which has the highest assessed valuation. Each city and special district shall select its change in population pursuant to this paragraph annually by a recorded vote of the governing body of the city or special district. A charter city and county may choose to use the change in population provided in this paragraph or may choose to use the change in population provided in Section 2 of Chapter 1221 of the Statutes of 1980.

(c) "Change in population" for a county shall be either (1) the percentage change from the preceding fiscal year of the total county population, (2) the percentage change from the preceding fiscal year of the total county population combined with the total population of all counties whose borders are contiguous with the county, or (3) the percentage change from the preceding fiscal year of the population within the incorporated portion of the county. Each county shall select its change in population pursuant to this paragraph annually by a recorded vote of the county's governing body.

(d) "Change in population" for a school district means the change in average daily attendance between the year prior to that for which the appropriations limit is being computed and the year for which the appropriations limit is being computed, using the average daily attendance as defined in Section 7906.

(e) "Change in population" for a community college district means the number resulting when the average daily attendance for the community college district for the current year computed pursuant to Section 84500 of the Education Code is divided by the

similarly computed average daily attendance for the previous year.

(f) "Local agency" means a city, county, city and county, special district, authority or other political subdivision of the state, except a school district, community college district, or county superintendent of schools. The term "special district" shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of 12½ cents per $100 of assessed value for the 1977–78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution.

If a special district levied, or had levied on its behalf, different property tax rates for the 1977–78 fiscal year depending on which area or zone within the district boundaries property was located, it shall be deemed not to have levied a secured property tax rate in excess of 12½ cents per $100 of assessed value if the total revenue derived from the ad valorem property tax levied by or for the district for 1977–78, divided by the total amount of taxable assessed valuation within the district's boundaries for 1977–78, does not exceed 0.00125.

(g) "School district" means an elementary, high school, or unified school district.

(h) "Local jurisdiction" means a local agency, school district, community college district, or county superintendent of schools.

(i) As used in Section 2 and subdivision (b) of Section 3 of Article XIII B, "revenues" means all tax revenues and the proceeds to a local jurisdiction or the state received from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues as described in subdivision (i) of Section 8 of Article XIII B. For a local jurisdiction, revenues and appropriations shall also include subventions, as defined in Section 7903, and with respect to the state, revenues and appropriations shall exclude those subventions.

(j) (1) "Proceeds of taxes" shall not include proceeds to a local jurisdiction or the state from regulatory licenses, user charges, or user fees except to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service.

(2) "Proceeds of taxes" also does not include the proceeds received by a local jurisdiction from a license tax imposed pursuant to Section 25149.5 of the Health and Safety Code or a tax or fee imposed pursuant to Section 25173.5 of the Health and Safety Code on the operation of a hazardous waste facility, or the proceeds received by a local jurisdiction from a surcharge which is collected by a regional disposal facility, as authorized pursuant to Section 25878 of the Health and Safety Code to the extent that these proceeds of

the license tax, tax, fee, or surcharge are expended for costs or increased burdens on local jurisdictions which are associated with the hazardous waste facility or regional disposal facility. These costs or burdens include, but are not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, emergency medical response, law enforcement, air and groundwater monitoring, epidemiological studies, emergency response training, and equipment related to the hosting of the hazardous waste facility or regional disposal facility.

SEC. 3. Section 2 of this bill incorporates amendments to Section 7901 of the Government Code proposed by both this bill and SB 88. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 7901 of the Government Code, and (3) this bill is enacted after SB 88, in which case Section 7901 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 88, at which time Section 2 of this bill shall 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 local governments to recover the costs imposed by the siting of a hazardous waste facility or low-level radioactive waste facility in their jurisdictions, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1350

An act relating to the Department of the Youth Authority.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. (a) The Legislature finds and declares, based on adult correctional studies and experiences, the following:

(1) Maintaining a prisoner's family ties has a positive effect on the recidivism rate for offenders.

(2) Enhancing visitor services increases the frequency and quality of visits and, in the Department of Corrections, has demonstrated that violent behavior in institutions is thereby decreased.

(3) Enhancing visitor services provides prisoners with strong family support, which can have a stabilizing influence on the institution benefiting the prisoners, the staff, and the community.

(b) The Legislature further finds and declares that the location of

the Northern California Youth Center and lack of services to assist visitors impedes visiting.

(c) The Department of the Youth Authority shall establish a visitor center at the Northern California Youth Center which visitor center shall provide, at a minimum, each of the following services to visitors, as needed:

(1) Outreach programs to wards' families.

(2) Assistance to visitors with transportation between public transit terminals in the Stockton area and the Northern California Youth Center.

(3) Crisis intervention.

(4) Information on visiting regulations and processes.

(5) Referral to other agencies and services.

(6) Parent education.

(7) A sheltered area for visitors who are waiting before or after visits.

In addition, the visitor center staff shall maintain working relations with the local community and institution.

(d) The visitor center may also provide child care services for the children of visitors.

(e) The goals of the Department of the Youth Authority in operating a visitor center shall be to achieve all of the following:

(1) Enhancing visitor services in order to provide wards with strong family support, which support can have a stabilizing influence on the institution and enhance the ward's parole performance.

(2) Improvement of ward institutional performance and behavior.

(f) For purposes of program evaluation, records shall be maintained of wards receiving visits and families receiving services. The wards shall be traced through their institutional and parole experiences. Their success and failure rate shall be compared to that of wards who did not receive visits or services.

(g) The department shall contract with a nonprofit agency to provide any of the services at the visitor center which the department is unable to provide.

(h) The department shall report by January 1, of each year, to the Legislature regarding the services the department has provided at the visitor center pursuant to this section, either directly or through contract, during the previous fiscal year.

(i) The establishment of a visitor center at the Northern California Youth Center is subject to the availability of funds provided to the department for purposes of this act through the annual Budget Act.

SEC. 2. This act shall be operative until January 1, 1992, and on that date is repealed.

CHAPTER 1351

An act to add Sections 50714 and 50714.5 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 October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. The Legislature finds and declares that there is a critical need for farmworker housing in the County of San Diego, which cannot be met without significant state assistance.

SEC. 2. Section 50714 is added to the Health and Safety Code, to read:

50714. (a) The San Diego County Farmworker Housing Account is hereby established, to be administered by the Department of Housing and Community Development, through its Office of Migrant Services pursuant to the authority granted in Sections 50406 and 50710, to assist in the financing, development, and operation of up to 500 family housing units for year-round use by migrant farm labor employees and their families. The sponsor shall seek federal, state, and local financial and in-kind assistance in the development of this housing, but the lack of that assistance shall not be a prerequisite for obtaining financing under this section for the development and operation of family housing units.

(b) The department shall ensure that the housing is operated on the same basis as other state-financed housing assisted pursuant to this chapter.

(c) The department shall award funds pursuant to this section to project sponsors who demonstrate that they are capable of effectively serving the housing needs of migrant farmworkers in San Diego County. The year-round use required by subdivision (a) may be interrupted as necessary to close the housing for maintenance purposes and to allow new migrant farmworker families to obtain housing.

(d) The department shall use funds appropriated by the Legislature for purposes of this section. The appropriated funds may be used for the costs permitted by, or pursuant to, subdivisions (b) to (e), inclusive, of Section 50712.5. For purposes of soliciting and awarding funds pursuant to this section, the department is not required to promulgate regulations.

(e) To be eligible for funding, a project sponsor shall make a contribution to the housing assisted under this section. However, if the housing sponsor can demonstrate that it does not have the capability to make that contribution, no contribution shall be required. A contribution, for purposes of this subdivision, may be in the form of a writedown of land costs, fee waiver, direct equivalent

financial contribution, or any other incentives of financial value.

(f) The department shall accept proposals from project sponsors commencing November 15, 1989. The department shall award grants to project sponsors commencing January 1, 1990.

SEC. 2.5. Section 50714.5 is added to the Health and Safety Code, to read:

50714.5. (a) The Director's San Diego County Farmworker Housing Discretionary Account is hereby established in the Office of Migrant Services in the department. The director may make loans or grants from this account for innovative farmworker housing projects providing housing for migrant farmworkers in San Diego County. All grants or loans shall be made to local public entities or private community-based nonprofit agencies which agree to own and operate the farmworker housing project under the terms and conditions prescribed by the department and which agree to provide and operate the project in compliance with habitability, admissions, eligibility, and rent provisions of other state-financed migrant farm labor centers operated by the Office of Migrant Services. In selecting sponsors, the director may make awards for projects serving the needs of single farmworkers, but preference shall be given to those projects primarily serving families. Funds may be used under this section for farmworker housing on either a permanent foundation or nonpermanent foundation, including manufactured housing or mobilehomes.

(b) The department shall use funds appropriated by the Legislature for purposes of this section to maximize the utility of any other local, federal, state, or private funds or other assistance made available for the purposes of this section. For purposes of soliciting and awarding funds pursuant to this section, the department is not required to promulgate regulations.

(c) To be eligible for funding, a project sponsor shall make a contribution to the housing assisted under this section. However, if the housing sponsor can demonstrate that it does not have the capability to make that contribution, no contribution shall be required. A contribution, for purposes of this subdivision, may be in the form of a writedown of land costs, fee waiver, direct equivalent financial contribution, or any other incentives of financial value.

(d) The department shall accept proposals from project sponsors commencing November 15, 1989. The department shall award grants to project sponsors commencing January 1, 1990.

SEC. 3. The Legislature finds and declares that this 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 San Diego County has large numbers of farmworkers living in caves and substandard housing, constituting some of the worst housing conditions to be found in the state or nation.

SEC. 4. The sum of five hundred thousand dollars ($500,000) is hereby reappropriated from Item 2240-101-001 of the Budget Act of 1989 to the Department of Housing and Community Development

in accordance with the following schedule:

(a) The sum of four hundred thousand dollars ($400,000) for the purposes of Section 50714 of the Health and Safety Code.

(b) The sum of one hundred thousand dollars ($100,000) for the purposes of Section 50714.5 of the Health and Safety Code.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This act addresses a critical farmworker housing emergency in the County of San Diego that imperils the health and safety of large numbers of farmworkers. It is necessary, therefore, that this act take immediate effect.

CHAPTER 1352

An act to amend Sections 17020.6, 17024.5, 17034, 17039, 17041, 17052.9, 17052.11, 17052.12, 17052.17, 17052.18, 17053.7, 17054.5, 17055, 17057, 17061.5, 17062, 17063, 17072, 17072.5, 17076, 17085, 17133, 17134, 17153, 17154, 17158, 17160, 17241, 17261, 17270, 17271, 17273, 17276, 17289, 17504, 17506, 17551, 17551.5, 17560, 17562, 17671, 17932, 18044, 18162, 18408.5, 18681.9, 18682, 18682.5, 18684, 18687, 18689, 18802.4, 18807, 18934, 19270, 20503, 23036, 23045, 23051.5, 23058, 23453, 23456, 23609, 23609.5, 23612, 23617, 23617.5, 23621, 23701d, 23701r, 23701s, 23701v, 23704, 23704.6, 23732, 23735, 23772, 23801, 23802, 23803, 24274, 24306, 24343, 24349.1, 24359, 24361, 24362, 24363, 24382, 24412, 24413, 24422.3, 24440, 24443, 24451, 24457, 24513, 24521, 24541, 24562, 24592, 24601, 24633.5, 24637, 24652, 24654, 24661, 24667, 24673.2, 24681, 24690, 24701, 24833, 24916, 24994, 25107, 25561, 25901c, 25934, 25951, 25951.5, and 25954 of, to add Sections 17020.12, 17092, 17094, 17095, 17232, 17279, 17502, 17512, 17559, 17563, 17564, 17565, 17566, 17570, 17858, 18180, 23045.6, 24276, 24357.10, 24363.5, 24442.5, and 24632 to, to repeal and add Sections 17272, 24368.1, and 24373 of, to repeal Sections 17027, 17515, 23733, 23805, 24353.1, 24356.1, 24374, 24375, 24376, 24380, 24381, 24452, 24453, 24454, 24454.2, 24702, 24703, 24704, 24705, 24706, and 24707 of, and to repeal Chapter 11.7 (commencing with Section 24585) of Part 11 of Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 17020.6 of the Revenue and Taxation Code is amended to read:

17020.6. For purposes of this part·

(a) The provisions of Section 7702 of the Internal Revenue

Code,relating to insurance contracts, shall apply.

(b) The provisions of Section 7702A of the Internal Revenue Code, relating to modified endowment contracts, shall apply.

SEC. 2. Section 17020.12 is added to the Revenue and Taxation Code, to read:

17020.12. The provisions of Section 7701(a)(20) of the Internal Revenue Code, relating to definition of "employee," shall apply.

SEC. 3. Section 17024.5 of the Revenue and Taxation Code is amended to read:

17024.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto as enacted on the specified date for the applicable taxable year as follows:

Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986	January 1, 1986
(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988	January 1, 1987
(F) For taxable years beginning on or after January 1, 1989	January 1, 1989

(2) For purposes of subparagraphs (C) and (D) of paragraph (1), the following applies:

(A) The provisions contained in Sections 41–44, inclusive, and 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, shall not be applicable.

(B) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, shall not be applicable.

(3) For taxable years beginning on and after January 1, 1987, the provisions referred to by subparagraphs (A) and (B) of paragraph (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(4) Unless otherwise specifically provided, the following shall apply:

(A) Any provision of the Internal Revenue Code which is operative on or after the specified date for that taxable year shall also be operative on the same date for purposes of this part.

(B) Any provision of the Internal Revenue Code which is inoperative on or after the specified date for that taxable year shall also be inoperative on the same date for purposes of this part.

(5) Unless otherwise specifically provided, uncodified provisions in federal laws enacted on or after January 1, 1987, that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part by a change in the specified date in paragraph (1) of subdivision (a), shall be applicable to the same taxable years specified in that paragraph.

(b) Unless otherwise specifically provided, when applying any section of the Internal Revenue Code for purposes of this part, any provision therein relating to any of the following shall not be applicable for purposes of this part:

(1) Except as provided in Chapter 4.5 (commencing with Section 23800) of Part 11 of Division 2, an electing small business corporation, as defined in Section 1361(b) of the Internal Revenue Code.

(2) Domestic international sales corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust, as defined in Section 679 of the Internal Revenue Code.

(7) Foreign taxes and foreign tax credits.

(8) Section 911 of the Internal Revenue Code, relating to United States citizens living abroad.

(9) A foreign corporation, except that Section 367 of the Internal Revenue Code shall be applicable.

(10) Credits and credit carryovers, except as provided in Section 17142.

(11) Nonresident aliens.

(12) Deduction for personal exemptions, as provided in Section 151 of the Internal Revenue Code.

(13) The tax on generation-skipping transfers imposed by Section 2601 of the Internal Revenue Code.

(14) The tax, relating to estates, imposed by Section 2001 or 2101 of the Internal Revenue Code.

(c) When applying the Internal Revenue Code for purposes of this part, any reference to regulations prescribed by "the secretary" shall not be applicable if the Franchise Tax Board has adopted and issued regulations. In the absence of regulations issued by the

Franchise Tax Board, regulations issued by "the secretary" in effect as of the specified effective date of the Internal Revenue Code sections referred to in subdivision (a) shall be applicable to the extent that they do not conflict with this part.

(d) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed in accordance with the Internal Revenue Code or regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board.

(e) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (d) shall be applicable with respect to any such application or consent.

(f) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(g) Unless otherwise specifically provided, when applying any section of the Internal Revenue Code for purposes of this part, any reference to the "secretary" shall mean the "Franchise Tax Board."

(h) When applying any section of the Internal Revenue Code for purposes of this part—

(1) References to "adjusted gross income" shall mean the amount computed in accordance with Section 17072, except as provided in paragraph (2)

(2) References to "adjusted gross income" for purposes of computing limitations based upon a percentage of adjusted gross income, shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year.

(3) References to "chapter" shall mean Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code.

(i) Unless otherwise specifically provided, when applying the Internal Revenue Code for purposes of this part, any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 4. Section 17027 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 17034 of the Revenue and Taxation Code is amended to read:

17034. Unless otherwise specifically provided therein, the provisions of any act:

(a) Which affect the imposition or computation of taxes, additions to tax other than Section 18682, or penalties shall be applied to

taxable years beginning on or after January 1 of the year in which the act becomes law.

(b) Which change the provisions of Section 18682 (relating to underpayment of estimated tax) shall be applied to taxable years beginning on or after January 1 of the year immediately after the year in which the act becomes law.

(c) Which otherwise affect the provisions of this part shall be applied on and after the date the act becomes law.

SEC. 6. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits). Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits which do not contain carryover or refundable provisions, except those described in paragraphs (4), (5), and (6).

(2) Credits which contain carryover provisions but do not contain refundable provisions.

(3) Credits which contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax)

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) The low-income tax credit allowed by Section 17069.

(7) Credits which contain refundable provisions but do not contain carryover provisions.

For the purposes of paragraphs (2), (3), and (7), the order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 18551.1 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (7) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax (before reduction for the alternative credit for taxes paid to another state), as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.12 (relating to research expenses).

(D) The credit allowed by Section 17053.5 (relating to the renter's credit).

(E) The credit allowed by Section 17057 (relating to clinical testing expenses).

(F) The credit allowed by Section 17058 (relating to low-income housing).

(G) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(H) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(I) The credit allowed by Section 18551.1 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) This section shall be applied in the computation of taxes for taxable years beginning on or after January 1, 1987.

SEC. 6.5. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits). Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits which do not contain carryover or refundable provisions, except those described in paragraphs (4), (5), and (6).

(2) Credits which contain carryover provisions but do not contain refundable provisions.

(3) Credits which contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) The low-income tax credit allowed by Section 17069.

(7) Credits which contain refundable provisions but do not contain carryover provisions.

For the purposes of paragraphs (2), (3), and (7), the order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 18551.1 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (7) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax (before reduction for the alternative credit for taxes paid to another state), as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063 --

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.12 (relating to research expenses)

(D) The credit allowed by Section 17053.5 (relating to the renter's credit).

(E) The credit allowed by Section 17057 (relating to clinical testing expenses).

(F) The credit allowed by Section 17058 (relating to low-income housing).

(G) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(H) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(I) The credit allowed by Section 18551.1 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "net tax" until the credit has been exhausted.

(e) This section shall be applied in the computation of taxes for taxable years beginning on or after January 1, 1987.

SEC. 7. Section 17041 of the Revenue and Taxation Code is amended to read:

17041. (a) There shall be imposed for each taxable year upon the

entire taxable income of every resident of this state, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income:

If the taxable income is:	The tax is:
Not over $3,650	1% of the taxable income
Over $3,650 but not over $8,650	$36.50 plus 2% of the excess over $3,650
Over $8,650 but not over $13,650	$136.50 plus 4% of the excess over $8,650
Over $13,650 but not over $18,950	$336.50 plus 6% of the excess over $13,650
Over $18,950 but not over $23,950	$654.50 plus 8% of the excess over $18,950
Over $23,950	$1,054.50 plus 9.3% of the excess over $23,950

(b) There shall be imposed for each taxable year upon the entire taxable income of every nonresident or part-year resident which is derived from sources in this state, except the head of a household as defined in Section 17042, a tax which shall be equal to the tax computed under subdivision (a) as if the nonresident or part-year resident were a resident multiplied by the ratio of California adjusted gross income to total adjusted gross income from all sources. For purposes of computing the tax under subdivision (a) and gross income from all sources, the net operating loss deduction provided in Section 172 of the Internal Revenue Code, as modified by Section 17276, shall be computed as if the taxpayer was a resident for all prior years.

(c) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state, when such resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income:

If the taxable income is:	The tax is:
Not over $7,300	1% of the taxable income
Over $7,300 but not over $17,300	$73 plus 2% of the excess over $7,300
Over $17,300 but not over $22,300	$273 plus 4% of the excess over $17,300

Over $22,300 but not over $27,600	$473 plus 6% of the excess over $22,300
Over $27,600 but not over $32,600	$791 plus 8% of the excess over $27,600
Over $32,600	$1,191 plus 9.3% of the excess over $32,600

(d) There shall be imposed for each taxable year upon the entire taxable income of every nonresident or part-year resident which is derived from sources within this state when such nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax which shall be equal to the tax computed under subdivision (c) as if the nonresident or part-year resident were a resident multiplied by the ratio of California adjusted gross income to total adjusted gross income from all sources. For purposes of computing the tax under subdivision (c) and gross income from all sources, the net operating loss deduction provided in Section 172 of the Internal Revenue Code, as modified by Section 17276, shall be computed as if the taxpayer was a resident for all prior years.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) The tax imposed by this part is not a surtax.

(g) (1) For purposes of this section, the taxation of the unearned income of a minor child who has not attained age 14 before the close of the taxable year and who has a parent living at the close of the taxable year shall be determined in accordance with Section 1(i) of the Internal Revenue Code, relating to certain unearned income of minor children taxed as if the parent's income.

(2) Section 1(i)(7)(B)(ii)(II) of the Internal Revenue Code, relating to income included on parent's return, is modified, for purposes of this part, to substitute "$5" for "$75" and "1 percent" for "15 percent."

(3) Paragraph (1) shall not apply if both of the following are true:

(A) The adjusted gross income of the minor child does not exceed the maximum amount for which the percentage of credit is 100 percent under subdivision (b) of Section 17069 (as adjusted by subdivision (g) of Section 17069).

(B) The minor child is qualified for the low-income tax credit allowed by Section 17069.

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the

prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) For taxable years beginning on and after January 1, 1988, and thereafter, the Franchise Tax Board shall compute an inflation adjustment factor by adding 100 percent to the percentage change figure which is furnished pursuant to paragraph (1) and dividing the result by 100, the amounts of each bracket to be rounded off to the nearest one dollar ($1).

(i) (1) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, only those items of adjusted gross income which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(2) For purposes of computing "California adjusted gross income" under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss which, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at adjusted gross income.

SEC. 8. Section 17052.9 of the Revenue and Taxation Code is amended to read:

17052.9. (a) For taxable years beginning before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount determined under subdivision (b) or (c).

(b) There shall be allowed as a credit an amount determined in accordance with Section 22 of the Internal Revenue Code, except—

(1) The amount of the credit shall be limited to 50 percent of the amount computed under Section 22 of the Internal Revenue Code.

(2) The credit shall not be allowed to any nonresident or part-year resident.

(c) (1) There shall be allowed as a credit an amount equal to 10 percent of the amount received by that individual as retirement income (as defined in paragraph (4) and as limited by paragraphs (5), (6), and (7)).

(2) In the case of a married individual, this subdivision shall apply to the taxable year only if both spouses so elect and no credit shall be allowed to either spouse under subdivision (b).

(3) A credit shall not be allowed under this subdivision, unless all of the following are met:

(A) An individual—

(i) Has not attained age 65 before close of the taxable year, and

(ii) Has income from pensions and annuities under a public retirement system (as defined in subparagraph (A) of paragraph (9)), and

(iii) Was allowed a credit under this section for a taxable year beginning prior to January 1, 1984.

(B) In the case of a married couple, the spouse who is under age 65 meets all of the requirements in subparagraph (A).

(C) The individual is a resident of this state (both spouses, in case of a joint return) for the entire taxable year.

(4) For purposes of this subdivision, the term "retirement income" means—

(A) In the case of an individual who has attained age 65 before the close of the taxable year, income from—

(i) Pensions and annuities (including, in the case of an individual who is, or has been, an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code, distributions by a trust described in Section 401(a) of the Internal Revenue Code, which is exempt from tax under Section 501(a) of the Internal Revenue Code).

(ii) Interest,

(iii) Rents,

(iv) Dividends, and

(v) An individual retirement account described in Section 408(a) of the Internal Revenue Code, or an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; or

(B) In the case of an individual who has not attained age 65 before the close of the taxable year and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services), income from pensions and annuities under a public retirement system (as defined in subparagraph (A) of paragraph (9)),

to the extent included in gross income without reference to this subdivision, but only to the extent that income does not represent compensation for personal services rendered during the taxable year.

(5) For purposes of this subdivision, the amount of retirement income shall not exceed five thousand dollars ($5,000) less—

(A) An amount equal to the sum of the amounts received by the individual (or, in the case of a joint return, by either spouse) as a pension or annuity—

(i) Under Title II of the Social Security Act,

(ii) Under the Railroad Retirement Act of 1974, or

(iii) Otherwise excluded from gross income.

No reduction shall be made under this subparagraph for any amount excluded from gross income under Section 72 of the Internal Revenue Code (relating to annuities), Section 101 of the Internal

Revenue Code (relating to life insurance proceeds), Section 104 of the Internal Revenue Code (relating to compensation for injuries or sickness), Section 105 of the Internal Revenue Code (relating to accident and health plans), Section 120 of the Internal Revenue Code (relating to qualified group legal services plan), Section 402 of the Internal Revenue Code (relating to a beneficiary of an employees' trust), or Section 403 of the Internal Revenue Code (relating to employee annuities).

(B) In the case of any individual who has not attained age 72 before the close of the taxable year—

(i) If that individual has not attained age 62 before the close of the taxable year, any amount of earned income (as defined in subparagraph (B) of paragraph (9) in excess of nine hundred dollars ($900) received by that individual in the taxable year, or

(ii) If that individual has attained age 62 before the close of the taxable year, the sum of one-half the amount of earned income received by that individual in the taxable year in excess of one thousand two hundred dollars ($1,200), but not in excess of one thousand seven hundred dollars ($1,700), and the amount of earned income so received in excess of one thousand seven hundred dollars ($1,700).

(6) In the case of a joint return, paragraph (5) shall be applied by substituting "seven thousand five hundred dollars ($7,500)" for "five thousand dollars ($5,000)." The seven thousand five hundred dollars ($7,500) provided by the preceding sentence shall be divided between the spouses in those amounts as may be agreed on by them, except that not more than five thousand dollars ($5,000) may be assigned to either spouse.

(7) In the case of a married individual filing a separate return, paragraph (5) shall be applied by substituting "three thousand seven hundred fifty dollars ($3,750)" for "five thousand dollars ($5,000)."

(8) In the case of a joint return, this subdivision shall be applied without regard to community property laws.

(9) For purposes of this subdivision—

(A) "Public retirement system" means a pension, annuity, retirement, or similar fund or system established by the United States, a state, a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia.

(B) "Earned income" has the meaning assigned to that term by Section 911(d)(2) of the Internal Revenue Code, except that such term does not include any amount received as a pension or annuity.

(10) The provisions of this subdivision shall not be applicable to taxable years beginning on or after January 1, 1992.

(d) This section shall remain in effect only until December 1, 1992, and as of that date is repealed.

SEC. 9. Section 17052.11 of the Revenue and Taxation Code is amended to read:

17052.11. (a) For taxable years beginning before January 1, 1991, there shall be allowed as a credit against the amount of "net tax" (as

defined in Section 17039) an amount equal to 55 percent of the costs (including installation charges but excluding interest charges), of a device designed and installed to convert a car or truck, which is registered in this state, to the use of an alcohol fuel consisting of at least 85 percent methanol or ethanol. The credit allowed by this section shall be claimed in the taxable year the device is installed and shall not exceed one thousand dollars ($1,000) per vehicle.

(b) In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(c) For purposes of this section, "device" is any apparatus for installation on a used motor vehicle or truck that requires modification of the engine or pollution control device, or both, so that methanol or ethanol may be used as fuel for the motor vehicle or truck.

(d) The Department of Motor Vehicles shall, upon request, cooperate with the Franchise Tax Board in determining vehicle eligibility under this section.

(e) If a federal tax credit is enacted for costs incurred by a taxpayer for devices described in this section, then to the extent that credit is allowed or allowable, the state credit provided in paragraph (a) of this section shall be reduced by the amount of the federal credit.

(f) That portion of the credit under this section which exceeds the "net tax" for the taxable year may not be carried over and applied to the "net tax" in succeeding taxable years.

(g) This section shall remain in effect only until December 1, 1991, and as of that date is repealed.

SEC. 10. Section 17052.12 of the Revenue and Taxation Code is amended to read·

17052.12. For taxable years beginning on or after January 1, 1987, and before January 1, 1993, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) The applicable percentage shall be 8 percent of the excess of the qualified research expenses for the taxable year over the base period research expenses.

(b) "Qualified research" shall include only research conducted in California.

(c) With the exception of a husband and wife, if two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the expenses paid or incurred. In the case of a partnership, the tax credit may be divided between the partners pursuant to a written partnership agreement in accordance with Chapter 10 (commencing with Section 17851), which includes Section 704 of the Internal Revenue Code concerning substantial economic effect, relating to partner's distributive share. In the case of a husband or wife who files a separate return, the credit

may be taken by either or equally divided between them.

(d) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) (1) Section 41(i) of the Internal Revenue Code, relating to termination, shall not apply.

(2) This section shall apply only to amounts incurred on or after January 1, 1988, and paid or incurred before January 1, 1993.

(3) In the case of any taxable year which begins before January 1, 1988, and ends after December 31, 1987, any amount for any base period with respect to that taxable year shall be the amount which bears the same ratio to that amount for that base period as the number of days in that taxable year after December 31, 1987, bears to the total number of days in that taxable year.

(4) In the case of any taxable year which begins before January 1, 1993, and ends after December 31, 1992, any amount for any base period with respect to that taxable year shall be the amount which bears the same ratio to that amount for that base period as the number of days in that taxable year before January 1, 1993, bears to the total number of days in that taxable year.

(f) This section shall remain in effect only until December 1, 1993, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d), until the credit has been exhausted.

SEC. 11. Section 17052.17 of the Revenue and Taxation Code is amended to read:

17052.17. (a) For taxable years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of either or both of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services such as those which identify local child care services, offer information describing these resources to employees, and make referrals of employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed to each taxpayer if the facility is to be used primarily by the children of the employees of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars ($50,000) for any taxable year.

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers.

(d) With the exception of a husband and wife, if two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to his, her, or its respective share of the costs paid or incurred. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) (1) In the case where the credit allowed under subdivision (b) exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(2) If the credit carryovers from preceding taxable years allowed under paragraph (1) plus the credit allowed for the taxable year under subdivision (b) would exceed an aggregate total of fifty thousand dollars ($50,000), then the credit allowed to reduce the "net tax" under this section for the taxable year shall be limited to fifty thousand dollars ($50,000) and the amount in excess of the fifty thousand dollars ($50,000) limit may be carried over and applied against the "net tax" in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding taxable year, does not exceed fifty thousand dollars ($50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 17250. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) (1) In order to be eligible for the credit allowed under subparagraph (A) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months

after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(j) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (e), until the credit has been exhausted.

SEC. 12. Section 17052.18 of the Revenue and Taxation Code is amended to read:

17052.18. (a) For taxable years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15

(2) The amount of the credit allowed by this section in any taxable year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan or a part-time qualified care plan made on behalf of the employee's dependent.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(3) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(5) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the

allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) With the exception of a husband and wife, if two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to his, her, or its respective share of the costs paid or incurred. In the case of a husband and wife who file a separate return, the credit may be taken by either or equally divided between them.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 12.5. Section 17052.18 of the Revenue and Taxation Code is amended to read:

17052.18. (a) For taxable years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan or to a part-time qualified care plan

made on behalf of the employee's dependents.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(5) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(6) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's

spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) With the exception of a husband and wife, if two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to his, her, or its respective share of the costs paid or incurred. In the case of a husband and wife who file a separate return, the credit may be taken by either or equally divided between them.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 13. Section 17053.7 of the Revenue and Taxation Code is amended to read:

17053.7. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to 10 percent of the amount of wages paid to each employee who is certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

The credit under this section shall not apply to an individual unless, on or before the day on which that individual begins work for the employer, the employer:

(1) Has received a certification from the Employment Development Department, or

(2) Has requested in writing that certification from the Employment Development Department.

For the purposes of this subdivision, if on or before the day on which the individual begins work for the employer, the individual has received from the Employment Development Department a written preliminary determination that he or she is a member of a targeted group, then the requirement of paragraph (1) or (2) shall be applicable on or before the fifth day on which the individual begins work for the employer.

(b) The credit under this section shall not apply to wages paid in excess of three thousand dollars ($3,000) during a taxable year by a

taxpayer to the same individual. With respect to each qualified employee, the aggregate credit under this section shall not exceed six hundred dollars ($600).

(c) The credit under this section shall not apply to wages paid to an individual:

(1) Who bears any of the relationships described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code to the taxpayer; or

(2) Who, if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code to a grantor, beneficiary, or fiduciary of the estate or trust; or

(3) Who is a dependent (as described in Section 152(a)(9) of the Internal Revenue Code) of the taxpayer, or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or a fiduciary of the estate or trust.

(d) The credit under this section shall not apply to wages paid to an individual if, prior to the hiring date of that individual, that individual has been employed by the employer at any time during which he or she was not certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

(e) If the certification of an employment has been revoked pursuant to subdivision (c) of Section 328 of the Unemployment Insurance Code, the credit under this section shall not apply to wages paid by the employer after the date on which notice of revocation is received by the employer.

(f) The credit under this section shall be in addition to any deduction under this part to which the taxpayer may be entitled, if any.

(g) The credit provided by this section shall be applied to wages paid to each qualifying employee during the 24-month period beginning on the date the employee begins working for the taxpayer.

(h) (1) A taxpayer may elect to have this section not apply for any taxable year.

(2) An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the four-year period beginning on the last date prescribed by law for filing the return for that taxable year (determined without regard to extensions).

(3) An election under paragraph (1) (or revocation thereof) shall be made in any manner which the Franchise Tax Board may prescribe.

(i) (1) In the case of a successor employer referred to in Section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the credit under this section with respect to wages paid by that successor employer shall be made in the same manner as if those wages were paid by the predecessor employer referred to in

that section.

(2) No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by that employee for another person, unless the amount reasonably expected to be received by the employer for those services from that other person exceeds the remuneration paid by the employer to that employee for those services.

(j) The term "wages" shall not include either of the following:

(1) Payments defined in Section 51(c)(3) of the Internal Revenue Code, relating to payments for services during labor disputes.

(2) Any amounts paid or incurred to an individual who begins work for the employer after December 31, 1989.

SEC. 13.5. Section 17053.7 of the Revenue and Taxation Code is amended to read:

17053.7. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to 10 percent of the amount of wages paid to each employee who is certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

The credit under this section shall not apply to an individual unless, on or before the day on which that individual begins work for the employer, the employer:

(1) Has received a certification from the Employment Development Department, or

(2) Has requested in writing that certification from the Employment Development Department.

For the purposes of this subdivision, if on or before the day on which the individual begins work for the employer, the individual has received from the Employment Development Department a written preliminary determination that he or she is a member of a targeted group, then the requirement of paragraph (1) or (2) shall be applicable on or before the fifth day on which the individual begins work for the employer.

(b) The credit under this section shall not apply to wages paid in excess of three thousand dollars ($3,000) during a taxable year by a taxpayer to the same individual. With respect to each qualified employee, the aggregate credit under this section shall not exceed six hundred dollars ($600).

(c) The credit under this section shall not apply to wages paid to an individual:

(1) Who bears any of the relationships described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code to the taxpayer; or

(2) Who, if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code to a grantor, beneficiary, or fiduciary of the estate or trust; or

(3) Who is a dependent (as described in Section 152(a)(9) of the

Internal Revenue Code) of the taxpayer, or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or a fiduciary of the estate or trust.

(d) The credit under this section shall not apply to wages paid to an individual if, prior to the hiring date of that individual, that individual has been employed by the employer at any time during which he or she was not certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

(e) If the certification of an employment has been revoked pursuant to subdivision (c) of Section 328 of the Unemployment Insurance Code, the credit under this section shall not apply to wages paid by the employer after the date on which notice of revocation is received by the employer.

(f) The credit under this section shall be in addition to any deduction under this part to which the taxpayer may be entitled, if any

(g) The credit provided by this section shall be applied to wages paid to each qualifying employee during the 24-month period beginning on the date the employee begins working for the taxpayer.

(h) (1) A taxpayer may elect to have this section not apply for any taxable year.

(2) An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the four-year period beginning on the last date prescribed by law for filing the return for that taxable year (determined without regard to extensions).

(3) An election under paragraph (1) (or revocation thereof) shall be made in any manner which the Franchise Tax Board may prescribe.

(i) (1) In the case of a successor employer referred to in Section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the credit under this section with respect to wages paid by that successor employer shall be made in the same manner as if those wages were paid by the predecessor employer referred to in that section.

(2) No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by that employee for another person, unless the amount reasonably expected to be received by the employer for those services from that other person exceeds the remuneration paid by the employer to that employee for those services.

(j) The term "wages" shall not include either of the following:

(1) Payments defined in Section 51(c)(3) of the Internal Revenue Code, relating to payments for services during labor disputes.

(2) Any amounts paid or incurred to an individual who begins work for the employer after December 31, 1993.

SEC. 14. Section 17054.5 of the Revenue and Taxation Code is amended to read:

17054.5. (a) (1) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) of a qualified individual an amount equal to 30 percent of the net tax.

(2) For taxable years beginning on or after January 1, 1987, and before January 1, 1988, a qualified individual means a qualified joint custody head of household as defined in subdivision (c).

(3) For taxable years beginning on or after January 1, 1988, a qualified individual means either of the following:

(A) A "qualified joint custody head of household" as defined in subdivision (c).

(B) A "qualified taxpayer" as defined in subdivision (e).

(4) The amount of the credit under this section shall not exceed two hundred dollars ($200) for any taxable year.

(b) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the maximum credit prescribed in subdivision (a). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index as modified for rental equivalent homeownership for all items from June 1987 to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1) and divide the result by 100.

(3) The Franchise Tax Board shall multiply the 1987 taxable year credit by the inflation adjustment factor provided in paragraph (2), rounded off to the nearest one dollar ($1).

(c) "Qualified joint custody head of household" means an individual who meets all of the following:

(1) Is not married at the close of the taxable year, or files a separate return and does not have his or her spouse as a member of his or her household during the entire taxable year.

(2) Maintains as his or her home a household which constitutes for the taxable year the principal place of abode for a qualifying child, as defined in subdivision (d), for no less than 146 days of the taxable year but no more than 219 days of the taxable year, under a decree of dissolution or separate maintenance, or under a written agreement between the parents prior to the issuance of a decree of dissolution or separate maintenance where the proceedings have been initiated

(3) Furnishes over one-half the cost of maintaining the household during the taxable year.

(4) Does not qualify as a head of household under Section 17042 or as a surviving spouse under Section 17046.

(d) For purposes of this section, a "qualifying child" means a son, stepson, daughter, or stepdaughter of the taxpayer or a decendant of a son or daughter of the taxpayer, but if that son, stepson, daughter,

stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a credit for the taxable year for that person under Section 17054.

(e) "Qualified taxpayer" means an individual who meets all of the following:

(1) Is married and files a separate return.

(2) During the last six months of the taxable year the taxpayer's spouse was not a member of the taxpayer's household.

(3) Maintains a household, whether or not the taxpayer's home, which constitutes the principal place of abode of a dependent mother or father of the taxpayer for the taxable year.

(4) Furnishes over one-half of the cost of maintaining the household during the taxable year.

(5) Does not qualify as a head of household under Section 17042 or as a surviving spouse under Section 17046.

SEC. 15. Section 17055 of the Revenue and Taxation Code is amended to read:

17055. (a) Any individual who is a nonresident or a part-year resident shall be allowed all credits provided under this part against the "net tax" (as defined by Section 17039), except those described in subdivision (b) and in Section 17053.5 (relating to the renter's credit), and Section 18002 (relating to taxes paid to another state), in the same proportion as the ratio determined under subdivision (b) or (d) of Section 17041.

(b) Credits allowed under this part which are conditional upon a transaction occurring wholly within California shall be allowed in their entirety.

SEC. 16. Section 17057 of the Revenue and Taxation Code is amended to read:

17057. For taxable years beginning on or after January 1, 1987, and before January 1, 1993, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount determined in accordance with Section 28 of the Internal Revenue Code, except as follows:

(a) The applicable percentage shall be 15 percent of the qualified clinical testing expenses for the taxable year.

(b) Qualified clinical testing expenses include only those expenses paid or incurred by the taxpayer for such testing conducted in California.

(c) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(d) (1) Section 28(e) of the Internal Revenue Code, relating to termination, shall not apply.

(2) This section shall remain in effect only until December 1, 1993, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (c), until the credit has been exhausted.

SEC. 17. Section 17061.5 of the Revenue and Taxation Code is amended to read:

17061.5. (a) For taxable years beginning on or after January 1, 1987, and before January 1, 1992, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) an amount equal to the amount determined under subdivision (b).

(b) (1) In the case of qualified assets held for more than one year, but not more than five years, the amount of the credit shall be equal to 3 percent of the net capital gain, if any, from the sale or exchange of those assets.

(2) In the case of qualified assets held for more than five years, the amount of the credit shall be equal to 4½ percent of the net capital gain, if any, from the sale or exchange of those assets.

(3) If gain or loss from more than one sale or exchange of capital assets is taken into account in computing taxable income for the taxable year, each of the following shall apply:

(A) The amount of the credit allowable under paragraph (1) shall not exceed 3 percent of the net capital gain, if any, from all sales and exchanges of capital assets taken into account in computing taxable income for the taxable year.

(B) The amount of the credit allowable under paragraph (2) shall not exceed 4½ percent of the excess of the net capital gain, if any, from all sales and exchanges of capital assets taken into account in computing taxable income for the taxable year over the amount of any gain for which a credit was allowed under paragraph (1).

(c) For purposes of this section, "qualified asset" means either or both of the following:

(1) Residential rental property which meets each of the following requirements:

(A) Is real property located in this state.

(B) Complies with the requirements for residential rental property specified in Section 167(j)(2)(B) of the Internal Revenue Code.

(2) Farm property which meets each of the following requirements:

(A) Is land or Section 1250 property (as defined by Section 1250(c) of the Internal Revenue Code) located in this state.

(B) Is property used for farming, as defined in clauses (i) and (ii).

(i) The term "farming" includes activities relating to stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(ii) The term "farming" also includes activities relating to each of the following:

(I) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm.

(II) Handling, drying, packing, grading, or storing on a farm any

agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(d) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d), until the credit has been exhausted.

SEC. 18. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, reduced by credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to 7 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by the alternative credit for taxes paid to other states as allowed by Chapter 12 (commencing with Section 18001).

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified

for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) (A) If there was a deferral of preference tax under former Section 17064.8 for any taxable year beginning before January 1, 1987, and the amount of the deferred tax has not been paid for any taxable year beginning before January 1, 1987, the amount of the net operating loss carryovers which may be carried to taxable years beginning after December 31, 1986, for purposes of this chapter, shall be reduced by the amount of the tax preferences attributable to the deferred tax which has not been paid.

(B) In the case of a net operating loss allowed to be carried forward under subdivision (d) of Section 17276, subparagraph (A) shall apply to the extent that such a loss would have resulted in a deferred tax under prior law.

(5) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not be applicable.

(6) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not be applicable.

(7) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(c) The amendments to Section 56(a)(6) of the Internal Revenue Code made by Section 10202(d) of Public Law 100-203, relating to minimum tax, shall not apply.

SEC. 18.5. Section 17063 of the Revenue and Taxation Code is amended to read:

17063. (a) There shall be allowed as a credit against the net tax (as defined by Section 17039) for any taxable year an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by paragraph (2) of subdivision (b) of Section 17062, reduced by the sum of the credits allowable under this part, other than:

(1) The credits described in paragraph (7) of subdivision (a) of Section 17039.

(2) That portion of any credit which reduces the tax below the tentative minimum tax as provided in paragraph (1) of subdivision (c) of Section 17039.

SEC. 19. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. Adjusted gross income shall be defined by Section 62 of the Internal Revenue Code.

SEC. 19.5. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. Adjusted gross income shall be defined by Section 62 of the Internal Revenue Code, except that the deduction pursuant to Section 17202 (relating to purchase of bonds by homebuyers) shall be allowed.

SEC. 20. Section 17072.5 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17072.5. (a) The amendments made to Section 62 of the Internal Revenue Code by Section 1001 of Public Law 100-647, relating to reimbursed expenses of employees, shall apply to taxable years beginning on or after January 1, 1987.

(b) The amendments made to Section 62 of the Internal Revenue Code by Section 6007 of Public Law 100-647, relating to jury duty pay remitted to an employer, shall apply to taxable years beginning on or after January 1, 1988.

SEC. 21. Section 17076 of the Revenue and Taxation Code, as amended by Chapter 9 of the Statutes of 1989, is amended to read:

17076. (a) The deductions allowed by Section 17201 shall be limited in accordance with the provisions of Section 67 of the Internal Revenue Code, relating to the 2-percent floor on miscellaneous itemized deductions.

(b) For taxable years beginning on or after January 1, 1987, and before January 1, 1988, the provisions of Section 10104 of Public Law 100-203, relating to treatment of regulated investment companies under 2-percent floor, shall be applicable.

(c) The amendments made to Section 67 of the Internal Revenue Code by Section 1001(f) of Public Law 100-647, relating to 2-percent floor on miscellaneous itemized deductions, shall apply to taxable years beginning on or after January 1, 1987.

(d) The amendments made to Section 67 of the Internal Revenue Code by Section 4011(a) of Public Law 100-647, relating to 2-percent floor on miscellaneous itemized deductions, shall apply to taxable years beginning on or after January 1, 1988, except that:

(1) Section 67(c)(4) of the Internal Revenue Code, relating to termination, shall not apply, and

(2) Section 67(c)(2) of the Internal Revenue Code, relating to treatment of publicly offered regulated investment companies, shall not apply to any taxable year beginning on or after January 1, 1990.

SEC. 22. Section 17085 of the Revenue and Taxation Code is amended to read:

17085. The provisions of Section 72 of the Internal Revenue Code, relating to annuities and certain proceeds of life insurance contracts, shall be modified as follows:

(a) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except that the repeal of Section 72(d) of the Internal Revenue Code, relating to repeal of special rule for employees' annuities, shall apply

only to the following:

(1) Any individual whose annuity starting date is after December 31, 1986.

(2) At the election of the taxpayer, any individual whose annuity starting date is after July 1, 1986, and before January 1, 1987.

(b) The amount of a distribution from an individual retirement account or annuity or employees' trust or employee annuity that is includable in gross income for federal purposes shall be reduced for purposes of this part by the lesser of either of the following:

(1) An amount equal to the amount includable in federal gross income for the taxable year.

(2) An amount equal to the basis in the account or annuity allowed by Section 17507 (relating to Individual Retirement Accounts and Simplified Employee Pensions) or the increased basis allowed by Sections 17504 and 17506 (relating to plans of self-employed individuals) remaining after adjustment for reductions in gross income under this provision in prior taxable years.

(c) The amount of the penalty imposed under this part shall be computed in accordance with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code using a rate of 2½ percent, in lieu of the rate provided in those sections.

(d) The provisions of Section 72(f)(2) of the Internal Revenue Code, relating to special rules for computing employees' contributions, shall be applicable without applying the exceptions which immediately follow that paragraph.

SEC. 23. Section 17092 is added to the Revenue and Taxation Code, to read:

17092. (a) The provisions of Section 3021(d) of Public Law 100-647, relating to effective dates for modifications to discrimination rules applicable to certain employee benefit plans, shall apply.

(b) The provisions of Section 6051(c) of Public Law 100-647, relating to effective date for provisions relating to benefits under discriminatory plans, shall apply.

SEC. 24. Section 17094 is added to the Revenue and Taxation Code, to read:

17094. The provisions of Section 81 of the Internal Revenue Code, relating to increases in vacation pay suspense account, shall apply as amended by Public Law 99-514.

SEC. 25. Section 17095 is added to the Revenue and Taxation Code, to read:

17095. For taxable years beginning on or after January 1, 1989, and before January 1, 1990, the provisions of Section 89 of the Internal Revenue Code, relating to benefits provided under certain employee benefit plans, shall not apply.

SEC. 26. Section 17133 of the Revenue and Taxation Code is amended to read:

17133. Income which this state is prohibited from taxing includes interest on bonds issued by this state or a local government in this

state, and the determination of whether a bond is issued by this state or a local government in this state shall be made without regard to (a) the source of payment of that bond or the security for that bond, public or private, and (b) whether or not public improvements are financed. If there is at any time following the original issuance of such a bond a separation in ownership between the bond and any right to receive interest on the bond (whether or not evidenced by a coupon), payments or accruals on that stripped bond and stripped coupon shall be treated in a manner consistent with Section 1286(d) of the Internal Revenue Code.

SEC. 27. Section 17134 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17134. (a) The amendments made to Section 132 of the Internal Revenue Code by Section 1011B of Public Law 100-647, relating to exclusions that apply to officers, etc., only if there is no discrimination, shall apply to taxable years beginning on or after January 1, 1988.

(b) The amendments made to Section 132 of the Internal Revenue Code by Section 6066 of Public Law 100-647, relating to air cargo, shall apply to transportation furnished after December 31, 1987, in taxable years beginning on or after January 1, 1988.

SEC. 28. Section 17153 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17153. The amendments made to Section 121 of the Internal Revenue Code by Section 6011 of Public Law 100-647, relating to determination of use during periods of out-of-residence care, shall apply to any sale or exchange after September 30, 1988, in taxable years beginning on or after January 1, 1988.

SEC. 29. Section 17154 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17154. (a) The amendments made to Section 117 of the Internal Revenue Code by Section 1011B of Public Law 100-647, relating to qualified scholarships, shall apply to taxable years beginning on or after January 1, 1988.

(b) The amendments made to Section 117 of the Internal Revenue Code by Section 4001 of Public Law 100-647, relating to qualified scholarships, shall apply to taxable years beginning on or after January 1, 1988.

SEC. 30. Section 17158 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17158. (a) The amendments made to Section 125 of the Internal Revenue Code by Sections 1011B, 1018(t)(6), and 6051(b) of Public Law 100-647, relating to cafeteria plans, shall apply to taxable years beginning on or after January 1, 1988.

(b) The amendments made to Section 125 of the Internal Revenue Code by Section 4002 of Public Law 100-647, relating to cafeteria plans, shall apply to taxable years beginning on or after January 1, 1988.

SEC. 31. Section 17160 of the Revenue and Taxation Code, as

added by Chapter 9 of the Statutes of 1989, is amended to read:

17160. The provisions of Section 6005 of Public Law 100-647, relating to interim treatment of certain amounts awarded to Christa McAuliffe Fellows, shall apply to taxable years beginning on or after January 1, 1988.

SEC. 33. Section 17232 is added to the Revenue and Taxation Code, to read:

17232. Paragraphs (11) and (13) of Section 1005(c) of Public Law 100-647, relating to amendments related to Section 511 of the Tax Reform Act of 1986, shall apply to taxable years beginning on or after January 1, 1987.

SEC. 34. Section 17241 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17241. (a) The amendments made to Section 170 of the Internal Revenue Code by Section 10711 of Public Law 100-203, relating to the definition of a charitable contribution, shall apply to taxable years beginning on or after January 1, 1987.

(b) The amendments made to Section 170 of the Internal Revenue Code by Section 6001 of Public Law 100-647, relating to treatment of certain amounts paid to or for the benefit of institutions of higher education, shall apply to taxable years beginning on or after January 1, 1988.

SEC. 35. Section 17261 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17261 (a) The amendments made to Section 263A of the Internal Revenue Code by Section 1008 of Public Law 100-647, relating to capitalization and inclusion in inventory costs of certain expenses, shall apply to taxable years beginning on or after January 1, 1987.

(b) (1) The amendments made to Section 263A of the Internal Revenue Code by Section 6026 of Public Law 100-647, relating to capitalization and inclusion in inventory costs of certain expenses, shall apply to taxable years beginning on or after January 1, 1988.

(2) The amendments made to Section 263A of the Internal Revenue Code by Section 6026(b) of Public Law 100-647, relating to treatment of animals produced in farming businesses, shall apply to taxable years beginning on or after January 1, 1989.

SEC. 36. Section 17270 of the Revenue and Taxation Code is amended to read:

17270. (a) For purposes of Section 162(a)(2) of the Internal Revenue Code, relating to travel expenses, all of the following shall apply:

(1) The place of residence of a member of the Legislature within the district represented shall be considered the tax home.

(2) The provisions of Section 162(h) of the Internal Revenue Code, relating to state legislators' travel expenses away from home, shall not be applied.

(b) The denial of deductions for expenses and interest relating to tax-exempt income shall be determined in accordance with Section

17280, in lieu of Section 265 of the Internal Revenue Code.

(c) The provisions of Section 280C(a) of the Internal Revenue Code (relating to rule for targeted jobs credit) shall not apply.

SEC. 37. Section 17271 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17271. (a) The amendments made to Section 274 of the Internal Revenue Code by Section 1001 of Public Law 100-647, relating to disallowance of certain entertainment, etc., expenses, shall apply to taxable years beginning on or after January 1, 1987.

(b) The amendments made to Section 274 of the Internal Revenue Code by Section 6003 of Public Law 100-647, relating to only 80 percent of meal and entertainment expenses allowed as a deduction, shall apply to taxable years beginning on or after January 1, 1988, except that clauses (i) and (ii) of Section 274(n) (2) (F) of the Internal Revenue Code shall apply only to taxable years beginning on or after January 1, 1989.

SEC. 38. Section 17272 of the Revenue and Taxation Code is repealed.

SEC. 39. Section 17272 is added to the Revenue and Taxation Code, to read:

17272. The provisions of Section 10103 of Public Law 100-203, relating to clarification of treatment of federal judges, shall apply to taxable years beginning on or after January 1, 1989.

SEC. 40. Section 17273 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989, is amended to read:

17273. The amendments made to Sections 220 and 221 of the Internal Revenue Code by Section 6007 of Public Law 100-647, relating to jury duty pay remitted to employer, shall apply to taxable years beginning on or after January 1, 1988.

SEC. 41. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1 and 17276.2, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1985, and beginning on or after January 1, 1992, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) The provisions of Section 172(b) (2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any taxable year shall not be eligible for carryover to any subsequent taxable year.

(c) Net operating loss carrybacks shall not be allowed.

(d) Notwithstanding the provisions of Section 172(b) (1) of the Internal Revenue Code—

(1) A net operating loss attributable to a taxable year beginning

in 1985 or 1986, shall be a net operating loss carryover to the first taxable year beginning in 1987, and for each of the two succeeding taxable years.

(2) A net operating loss attributable to a taxable year ending on or after January 1, 1985 and before December 31, 1985, shall be a net operating loss carryover to the first taxable year beginning in 1987, and for each of the two succeeding taxable years.

(3) For purposes of paragraph (2), the amount of the carryover shall be reduced so that the amount of carryover, after application of this paragraph and subdivision (b), shall be equal to the following percentage of the entire amount of the net operating loss for the taxable year:

(A) For taxable years ending in January 1985, 4 percent.

(B) For taxable years ending in February 1985, 8 percent.

(C) For taxable years ending in March 1985, 12 percent.

(D) For taxable years ending in April 1985, 17 percent.

(E) For taxable years ending in May 1985, 21 percent.

(F) For taxable years ending in June 1985, 25 percent.

(G) For taxable years ending in July 1985, 29 percent.

(H) For taxable years ending in August 1985, 33 percent.

(I) For taxable years ending in September 1985, 37 percent.

(J) For taxable years ending in October 1985, 42 percent.

(K) For taxable years ending in November 1985, 46 percent

(L) For taxable years ending in December 1985, 50 percent.

(e) For taxable years beginning on or after January 1, 1987, net operating loss carryovers shall be applied in accordance with Section 172 of the Internal Revenue Code (earliest year first)—

(1) First, from losses which were allowable under prior law, incurred in taxable years beginning prior to January 1, 1985.

(2) Second, from losses, other than losses allowed under prior law, incurred in taxable years ending in 1985.

(3) Third, from losses, other than losses allowed under prior law, incurred in taxable years beginning in 1985.

(4) Fourth, from losses which were allowable under prior law, incurred in taxable years beginning in 1985.

(5) Fifth, from losses, other than losses allowed under prior law, incurred in taxable years beginning in 1986.

(6) Sixth, from losses which were allowable under prior law, incurred in taxable years beginning in 1986.

(7) Seventh, from losses incurred in taxable years beginning on or after January 1, 1987.

(f) Notwithstanding any provisions of this section, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1 and 17276.2.

SEC. 41.5. Section 17279 is added to the Revenue and Taxation Code, to read:

17279. The provisions of Section 10204 of Public Law 100-203, relating to amortization of past service pension costs, shall not apply.

SEC. 42. Section 17289 of the Revenue and Taxation Code, as

added by Chapter 9 of the Statute of 1989, is amended to read:

17289. The provisions of Section 6008 of Public Law 100-647, relating to business use of automobiles by rural mail carriers, shall apply to taxable years beginning on or after January 1, 1988.

SEC. 43. Section 17502 is added to the Revenue and Taxation Code, to read:

17502. (a) The amendments to Section 401 of the Internal Revenue Code made by Section 9341 of Public Law 100-203, relating to security required upon adoption of plan amendment resulting in significant underfunding, shall apply in the same manner as specified in Section 9341(c) of that act.

(b) The amendments to Section 401 of the Internal Revenue Code made by Section 6053 of Public Law 100-647, relating to required distribution beginning date for governmental and church plans, shall apply in the same manner as specified in Section 1121(d) of Public Law 99-514, relating to minimum distribution requirements.

(c) The amendments to Section 401 of the Internal Revenue Code made by Section 6055 of Public Law 100-647, relating to minimum participation standards, of Public Law 100-647, shall apply in the same manner as specified in Section 1112(e) of Public Law 99-514, relating to minimum coverage requirements for qualified plans.

SEC. 44. Section 17504 of the Revenue and Taxation Code is amended to read:

17504. (a) The provisions of Section 402 of the Internal Revenue Code, relating to taxability of beneficiaries of employees' trusts, shall be modified as follows:

(1) The amendments made to Section 402(a) of the Internal Revenue Code by Public Law 98-369 shall apply to distributions made after July 18, 1984, in taxable years ending after that date.

(2) The amendments and transitional rules made by Public Law 99-514 shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except as otherwise provided.

(3) The basis of any person in an employees' trust shall include the amount of any contributions made prior to January 1, 1987, which were not allowed as a deduction under former Sections 17503 and 17513 (including predecessor Section 17524 repealed by Chapter 488 of the Statutes of 1983) relating to special limitations for self-employed individuals.

(b) (1) There is hereby imposed a tax on lump-sum distributions computed in accordance with the provisions of Section 402(e) of the Internal Revenue Code using the rates and brackets prescribed in subdivision (a) of Section 17041 (without regard to Section 17045) in lieu of the rates and brackets in Section 1(c) of the Internal Revenue Code. The recipient of the lump-sum distribution shall be liable for the tax imposed by this paragraph.

(2) For purposes of this part, the provisions of Section 1122(h) of Public Law 99-514, as modified by Section 1011A(b) of Public Law 100-647, shall apply, except as modified by each of the following:

(A) The provisions of Section 1122(h) (3) (B) of Public Law 99-514 shall be modified to refer to Section 17041 rather than Section 1 of the Internal Revenue Code of 1986.

(B) The provisions of Section 1122(h) (3) (B) (ii) of Public Law 99-514 shall be modified to provide a tax rate of 5.5 percent rather than a tax rate of 20 percent.

(C) The provisions of Section 1122(h) (5) of Public Law 99-514 shall be modified to refer to Section 17041 rather than Section 1 of the Internal Revenue Code of 1954.

(3) For purposes of this section, a taxpayer shall elect the same special lump-sum distribution averaging method for purposes of this part as that elected for federal purposes under Section 402(e) (4) (B) of the Internal Revenue Code.

(4) The provisions of Section 1124(a) of Public Law 99-514, as amended by Section 1011A(d) of Public Law 100-647, shall apply.

(5) The provisions of Section 1124(c) of Public Law 99-514, as added by Section 1011A(d) of Public Law 100-647, shall apply.

(c) The provisions of Section 402(e) (2) of the Internal Revenue Code, relating to multiple distributions and distributions of annuity contracts, shall be modified to apply only to distributions received in taxable years beginning on or after January 1, 1987, rather than after December 31, 1973.

SEC. 45. Section 17506 of the Revenue and Taxation Code is amended to read:

17506. The provisions of Section 403 of the Internal Revenue Code, relating to taxation of employee annuities, shall be modified as follows:

(a) The amendments made to Section 403(a) (4) of the Internal Revenue Code by Public Law 98-369, relating to rollovers, shall apply to distributions made after July 18, 1984, in taxable years ending after that date.

(b) The amendments made to Section 403(b) (8) of the Internal Revenue Code by Public Law 98-369, relating to rollovers, shall apply to distributions made after July 18, 1984, in taxable years ending after that date.

(c) The amendments and transitional rules made by Public Law 99-514 (as modified by subdivision (b) of Section 17504) shall be applicable to this part for the same transactions and the same years as they are applicable for federal purposes, except as otherwise provided.

(d) The basis of any person in an employee annuity shall include the amount of any contributions made prior to January 1, 1987, which were not allowed as a deduction under former Sections 17503 and 17513 (including predecessor Section 17524 repealed by Chapter 488 of the Statutes of 1983) relating to special limitations for self-employed individuals.

SEC. 46. Section 17512 is added to the Revenue and Taxation Code, to read:

17512. (a) The amendments to Section 415 of the Internal

Revenue Code made by Section 6054 of Public Law 100-647, relating to Section 415 limitation for state and local plans, shall apply in the same manner as specified in Section 6054(b) of that act.

(b) The amendments to Section 415 of the Internal Revenue Code made by Section 6059 of Public Law 100-647, relating to application of Section 415 limitations to police and firefighters, shall apply in the same manner as specified in Section 1106(i) of Public Law 99-514, relating to effective dates of adjustments to limitations on contributions and benefits under qualified plans.

(c) The amendments to Section 1106(i) of Public Law 99-514 made by Section 6062 of Public Law 100-647, relating to effective date of Section 415 limitations of collectively bargained agreements, shall apply.

SEC. 47. Section 17515 of the Revenue and Taxation Code is repealed.

SEC. 47.5. Section 17551 of the Revenue and Taxation Code is amended to read:

17551. (a) Accounting periods and methods of accounting shall be determined in accordance with Subchapter E of Chapter 1 of Subtitle A of the Internal Revenue Code, except as otherwise provided in this chapter.

(b) For taxable years beginning on or after January 1, 1987, Section 444 of the Internal Revenue Code, as added by Public Law 100-203, relating to election of taxable years other than required taxable years, shall be applicable, except that Section 444(c) (1), relating to effect of election, shall not apply.

SEC. 48. Section 17551.5 of the Revenue and Taxation Code is amended to read:

17551.5. (a) In the case of any trust, S corporation, partnership, or personal service corporation required to change its accounting period by the federal Tax Reform Act of 1986 (Public Law 99-514) as modified by Section 10206 of Public Law 100-203 and Section 1008(e) of Public Law 100-647, that change shall be treated as initiated by the trust, S corporation, partnership, or personal service corporation with the consent of the Franchise Tax Board.

(b) With respect to any beneficiary, partner, or shareholder which is required to include the items from more than one taxable (or income) year of the trust, partnership, or S corporation in any one taxable year, any income in excess of expenses for the short taxable (or income) year resulting from the change described in subdivision (a) shall be taken into account ratably in each of the first four taxable years beginning after December 31, 1986, unless the beneficiary, partner, or shareholder elects to include all that income in the beneficiary's, partner's, or shareholder's taxable year with or within which the trust's, partnership's, or corporation's short taxable (or income) year ends.

(c) The spreading of income over four years, as allowed by subdivision (b), shall not apply unless the taxpayer receives similar treatment for federal income tax purposes.

(d) For taxable years beginning on or after January 1, 1987, each of the following shall apply:

(1) The adjusted basis of any partner's interest in a partnership or shareholder's stock in an "S corporation" shall be determined as if all of the income to be taken into account ratably in the four taxable years referred to in subdivision (b) were included in gross income for the first of those taxable years.

(2) If any interest in a partnership or stock in an "S corporation" is disposed of before the last taxable year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent taxable years in the spread period under subdivision (b) and attributable to the interest or stock disposed of shall be included in gross income for the taxable year in which the disposition occurs. For purposes of the preceding sentence, the term "spread period" means the period consisting of the four taxable years referred to in subdivision (b).

SEC. 49. Section 17559 is added to the Revenue and Taxation Code, to read:

17559. (a) The amendments to Section 451 of the Internal Revenue Code made by Section 6030 of Public Law 100-647 shall be applied in the same manner as specified by Section 6030(b) of that act.

(b) The amendments to Section 451 of the Internal Revenue Code made by Section 6033 of Public Law 100-647 shall be applied in the same manner as specified by Section 6033(b) of that act.

SEC. 50. Section 17560 of the Revenue and Taxation Code is amended to read:

17560. (a) At the election of the taxpayer, the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as payment on installment obligations, shall not be applicable.

(b) (1) If an election is not made under subdivision (a), then for purposes of applying the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as a payment on installment obligations, the provisions of Sections 811(c)(2), 811(c)(4), 811(c)(6), and 811(c)(7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply.

(2) The provisions of Section 812 of Public Law 99–514, relating to the disallowance of use of installment method for certain obligations as modified by Section 1008(g) of Public Law 100-647, shall apply to taxable years beginning on or after January 1, 1987.

(c) The amendments to Sections 453, 453A, and 453C made by Section 10202 of Public Law 100-203, relating to installment sales, shall not apply.

(d) The amendments to Sections 453, 453A, and 453C made by Public Law 100-647, relating to installment sales, shall not apply.

SEC. 51. Section 17562 of the Revenue and Taxation Code is amended to read:

17562. For purposes of applying the provisions of Section 448 of

the Internal Revenue Code, relating to limitations on use of the cash method of accounting, Sections 801 (d) (2), 801 (d) (3), and 801 (d) (5) of the Tax Reform Act of 1986 (Public Law 99-514), as modified by Section 1008(a) of Public Law 100-647, shall apply to taxable years beginning on or after January 1, 1987.

SEC. 52. Section 17563 is added to the Revenue and Taxation Code, to read:

17563. The repeal of Section 463 of the Internal Revenue Code by Section 10201 of Public Law 100-203, relating to accrual of vacation pay, shall not apply.

SEC. 53. Section 17564 is added to the Revenue and Taxation Code, to read:

17564. (a) Long-term contracts shall be accounted for in accordance with the special rules set forth in Section 460 of the Internal Revenue Code.

(b) (1) The provisions of Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall be applicable to taxable years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during a taxable year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for the taxable year in which the contract began.

(c) The amendments to Section 460 of the Internal Revenue Code made by Section 10203 of Public Law 100-203, relating to a reduction in the percentage of items taken into account under the completed contract method, shall not apply.

(d) The amendments to Section 460 of the Internal Revenue Code made by Section 5041 of Public Law 100-647, relating to a reduction in the percentage of items taken into account under the completed contract method, shall not apply.

(e) For purposes of applying Section 460(a) (2) of the Internal Revenue Code, relating to 90 percent look-back method, any adjustment to income computed under subdivision (b) shall be deemed to have been reported in the taxable year from which the adjustment arose, rather than the taxable year in which the contract was completed.

SEC. 53.5. Section 17565 is added to the Revenue and Taxation Code, to read:

17565. (a) The taxable year of a taxpayer may not be different than the taxable year used for purposes of the Internal Revenue Code, unless initiated or approved by the Franchise Tax Board.

(b) For purposes of this section, whenever a taxpayer is required to make a federal return for a period of less than 12 months, that period shall be deemed to be a taxable year, and Section 17552 shall apply.

SEC. 54. Section 17566 is added to the Revenue and Taxation Code, to read:

17566. The provisions of Section 6064(d) of Public Law 100-647, relating to the effective date for modifications to Section 457 of the Internal Revenue Code, shall apply.

SEC. 54.5. Section 17570 is added to the Revenue and Taxation Code, to read:

17570. The special rules for designated settlement funds prescribed by Section 468B of the Internal Revenue Code shall be applicable, except as follows:

(a) The tax imposed shall be at the maximum rate imposed under Section 17041.

(b) No deduction shall be allowed for state and local taxes on, or according to, or measured by, income or profits.

SEC. 55. Section 17671 of the Revenue and Taxation Code is amended to read:

17671. (a) The provisions of Section 584 of the Internal Revenue Code, relating to common trust funds, shall be applicable, except as otherwise provided.

(b) (1) The provisions of Section 1008(e)(5) of Public Law 100-647, relating to taxable year of common trust fund, shall apply.

(2) The provisions of Section 806(e)(2) of Public Law 99-514, relating to the effective date for change in accounting period, as modified by Section 1008(e)(5) of Public Law 100-647, shall apply.

(3) If a return was filed for the short taxable year prior to January 1, 1990, which included the full amount of income in excess of expenses for that period, the taxpayer shall be permitted, prior to January 1, 1990, to file an amended return to spread that income ratably over the first four taxable years beginning after December 31, 1987.

SEC. 55.5. Section 17858 is added to the Revenue and Taxation Code, to read:

17858. For purposes of this part and Part 11 (commencing with Section 23001), any election relating to the computation of depreciation shall be made by the partnership and each partner shall take into account his or her distributive share of the amount computed in accordance with that election.

SEC. 56. Section 17932 of the Revenue and Taxation Code is amended to read:

17932. (a) Every partnership shall make a return for each taxable year, stating specifically the items of gross income and the deductions allowed by this part. The return shall include the names and addresses of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the partners.

(b) Each partnership required to file a return under subdivision (a) for any partnership taxable year shall (on or before the day on

which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for another person at any time during that taxable year a copy of that information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name and address of such other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish in the manner prescribed by the Franchise Tax Board such other person the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

SEC. 57. Section 18044 of the Revenue and Taxation Code, as added by Chapter 9 of the Statutes of 1989 is amended to read:

18044. The amendments made to Section 1034 of the Internal Revenue Code by Section 6002 of Public Law 100-647, relating to rollover of gain on the sale of a principal residence, shall apply to taxable years beginning on or after January 1, 1988.

SEC. 58. Section 18162 of the Revenue and Taxation Code is amended to read:

18162. If a taxpayer has a gain from the sale before October 1, 1987, of dairy cattle under a valid contract with the United States Department of Agriculture under the milk production termination program, then to the extent that such gain is properly taken into account under the taxpayer's method of accounting during 1987, a deduction shall be allowed as follows:

(a) In the case of dairy cattle held for more than one year, but not more than five years, 35 percent of the gain.

(b) In the case of dairy cattle held for more than five years, 50 percent of the gain.

SEC. 59. Section 18180 is added to the Revenue and Taxation Code, to read:

18180. The provisions of Section 7872 of the Internal Revenue Code, relating to the treatment of loans with below market interest rates, shall apply.

SEC. 60. Section 18408.5 of the Revenue and Taxation Code is amended to read:

18408.5. (a) 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.

Except as provided in subdivision (b), 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.

(b) Deductions provided by Chapter 5 (commencing with Section 17501), attributable to earned income of a partner derived from a partnership filing a group return on behalf of electing nonresident partners under subdivision (a), shall be allowed if the partner certifies, in such form and manner as the Franchise Tax Board may prescribe, that he or she has no earned income from any other source.

(c) This section shall also be applicable to nonresident shareholders of a corporation which is treated as a "S corporation" under Chapter 4.5 (commencing with Section 23800) of Part 11. In that case, the provisions of subdivisions (a) and (b) are modified to refer to "shareholders" in lieu of "partners" and to "S corporation" in lieu of "partnership."

SEC. 61. Section 18681.9 of the Revenue and Taxation Code is amended to read:

18681 9 (a) The person required by subdivision (c) of Section 17507 to file a report regarding an individual retirement account or individual retirement annuity shall pay a penalty of fifty dollars ($50) for each failure, unless it is shown that such failure is due to reasonable cause.

(b) (1) Any individual who—

(A) Is required to furnish information under Section 17508 as to the amount designated nondeductible contributions made for any taxable year, and

(B) Overstates the amount of those contributions made for that taxable year, shall pay a penalty of one hundred dollars ($100) for each such overstatement unless it is shown that such overstatement is due to reasonable cause.

(2) Any individual who fails to file a form required to be filed by the Franchise Tax Board under Section 17508 shall pay a penalty of fifty dollars ($50) for each failure unless it is shown that the failure is due to reasonable cause.

(c) Article 2 (commencing with Section 18581) of this chapter (relating to deficiency procedures for income taxes) shall not apply in respect of the assessment or collection of any penalty imposed under this section.

SEC. 62. Section 18682 of the Revenue and Taxation Code is amended to read:

18682. (a) An amount shall be added to the tax imposed under Section 17041 or 17048 for any underpayment of estimated tax. The amount shall be determined in accordance with Section 6654 of the Internal Revenue Code, except as otherwise provided in this section.

(b) The applicable annual rate specified in Section 6654(a)(1) of the Internal Revenue Code shall be the rate determined under Section 19269.

(c) The annualized income installment, determined under Section 6654(d)(2) of the Internal Revenue Code, shall not include "alternative minimum taxable income" or "adjusted self-employment income."

(d) Section 6654(e) of the Internal Revenue Code is modified as follows:

(1) Paragraph (1) shall not be applicable.

(2) No addition to the tax shall be imposed under this section if:

(A) The tax—

(i) Imposed under Section 17041 or 17048 for the preceding taxable year, minus the sum of any credits against the tax provided by this part, or

(ii) Computed under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by this part—is less than one hundred dollars ($100), except in the case of a separate return filed by a married person the amount shall be less than fifty dollars ($50); or

(B) Eighty percent or more of the tax imposed under Section 17041 or 17048 for the preceding taxable year, less any credits against the tax other than the credit allowed under Section 18551.1 for tax withheld on wages pursuant to Section 13020 of the Unemployment Insurance Code, was paid by withholding of tax on wages, as provided by Section 13020 of the Unemployment Insurance Code; or

(C) Eighty percent or more of the estimated tax for the taxable year will be paid by withholding of tax on wages, as provided by Section 13020 of the Unemployment Insurance Code; or

(D) Eighty percent or more of the adjusted gross income for the taxable year consists of wages subject to withholding pursuant to Section 13020 of the Unemployment Insurance Code. However, this paragraph shall not apply if the employee files a false or fraudulent withholding exemption certificate for the taxable year.

(e) Section 6654(f) of the Internal Revenue Code shall not apply and for purposes of this section the term "tax" means the tax imposed under Section 17041 or 17048, less any credits against the tax provided by this part, other than the credit provided by Section 18551.1 (relating to tax withheld on wages).

(f) The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, shall be the credit allowed under Section 18551.1.

(g) This section shall apply to a nonresident individual.

(h) Section 6654(*l*) of the Internal Revenue Code shall not apply.

(i) (1) For purposes of Section 6654(d) of the Internal Revenue Code, the term "required annual payment" means the lesser of either of the following:

(A) Eighty percent of the tax shown on the return for the taxable year (or, if no return is filed, 80 percent of the tax for that year).

(B) One hundred percent of the tax shown on the return of the individual for the preceding taxable year.

(2) In the case of any required installment, the applicable percentage is as follows:

In the case of the following required installments:	The applicable percentage is:
1st	20
2nd	40
3rd	60
4th	80

SEC. 63. Section 18682.5 of the Revenue and Taxation Code is amended to read:

18682.5. (a) No addition to tax shall be made under Section 18682 for any period before April 16, 1988, with respect to any underpayment, to the extent that underpayment was created or increased by any provision in the act adding this section to the code. The Franchise Tax Board shall adopt procedures, forms, and instructions to implement this section in a reasonable manner.

(b) No addition to tax shall be made under Section 18682 for any period before April 16, 1989, with respect to any underpayment to the extent that underpayment was created or increased by any provision of Sections 1001 to 2005, inclusive, of Public Law 100-647 (TAMRA) which was adopted by reference or otherwise incorporated into the provisions of this part.

SEC. 64. Section 18684 of the Revenue and Taxation Code is amended to read:

18684. (a) (1) If any part of any underpayment (as defined in subdivision (c)) of tax required to be shown on a return is due to negligence, or disregard of rules or regulations, there shall be added to the tax an amount equal to 5 percent of the underpayment.

(2) There shall not be taken into account under this subdivision any portion of an underpayment attributable to fraud with respect to which a penalty is imposed under subdivision (b).

(3) For purposes of this subdivision, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of this part, and the term "disregard" includes any careless, reckless, or intentional disregard.

(b) (1) If any part of any underpayment (as defined in subdivision (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.

(2) If the Franchise Tax Board establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer established is not attributable to fraud.

(3) In the case of a joint return, this subdivision shall not apply

with respect to a spouse unless some part of the underpayment is due to the fraud of that spouse.

(c) For purposes of this section, "underpayment" means "deficiency" as defined by Section 18591.1 (except that, for this purpose, the tax shown on a return shall be taken into account only if that return was filed on or before the last day prescribed for the filing of that return, determined with regard to any extension of time for that filing).

(d) If any penalty is assessed under subdivision (b) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under Section 18681 (relating to failure to file that return) or Section 18684.2 (relating to failure to pay tax) shall be assessed with respect to the portion of the underpayment which is attributable to fraud.

(e) If:

(1) A taxpayer fails to make the report required under Section 1092(a)(3)(B) of the Internal Revenue Code in the manner prescribed by that section and that failure is not due to reasonable cause, and

(2) That taxpayer has an underpayment of any tax attributable (in whole or in part) to the denial of a deduction of a loss with respect to any position (within the meaning of Section 1092(d)(2) of the Internal Revenue Code),

then that underpayment shall, for purposes of subdivision (a), be treated as an underpayment due to negligence.

(f) If:

(1) Any amount is shown on—

(A) An information return, or

(B) A return filed under Section 17932 or Section 18405 by an estate or trust, and

(2) The payee (or other person with respect to whom the return is made) fails to properly show that amount on his or her return,

any portion of an underpayment attributable to that failure shall be treated, for purposes of subdivision (a), as due to negligence in the absence of clear and convincing evidence to the contrary. If any penalty is imposed under subdivision (a) by reason of the preceding sentence, only the portion of the underpayment which is attributable to the failure described in the preceding sentence shall be taken into account in determining the amount of the penalty under subdivision (a).

(3) This subdivision shall not apply to any information return where the amount of unreported income is less than one hundred dollars ($100).

(g) The amendments to subdivisions (a) and (b) made by the act that added this subdivision shall apply only to returns for which the due date, determined without regard to extensions, is after December 31, 1988.

SEC. 65. Section 18687 of the Revenue and Taxation Code is

amended to read:

18687. If the time for the payment of the tax or any installment agreement entered into under Section 18700 is extended, interest thereon shall be assessed, collected and paid in the same manner as the tax at the adjusted annual rate established pursuant to Section 19269 from the date upon which such payment should have been made if no extension had been granted until the date the tax is paid.

SEC. 66. Section 18689 of the Revenue and Taxation Code is amended to read:

18689. (a) Except as provided in Section 18692, interest shall be imposed under this article with respect to any penalty assessable under this part or Part 11 (commencing with Section 23001), as provided in this section.

(b) In the case of a penalty which, when assessed, is due and payable on notice and demand, other than a penalty imposed under Section 18681 (relating to failure to file a return on or before the due date) and Section 18684.2 (relating to underpayment of tax), interest shall be imposed from the date of the notice and demand to the date of payment.

(c) In the case of a penalty which is initially assessed as a deficiency, other than a penalty imposed under Section 18681 (relating to failure to file a return on or before the due date), Section 18684 (relating to negligence or fraud), Section 18684.2 (relating to underpayment of tax), Section 18684.4 (relating to substantial understatement of tax liability), or Section 18699 (relating to valuation overstatements), interest shall be imposed from the date of the notice of proposed assessment to the date of payment.

(d) Interest shall be imposed under this article with respect to any penalty imposed by Section 18681 (relating to failure to file a return on or before the due date), Section 18684 (relating to negligence or fraud), Section 18684.2 (relating to underpayment of tax), Section 18684.4 (relating to substantial understatement of tax liability), or Section 18699 (relating to valuation overstatements), for the period which—

(1) Begins on the date on which the return of the tax with respect to which that penalty is imposed is required to be filed (including any extensions), and

(2) Ends on the date of payment of that addition to tax.

SEC. 67. Section 18802.4 of the Revenue and Taxation Code is amended to read:

18802.4. (a) Every person doing business as a broker shall, when required by the Franchise Tax Board, make a return, in accordance with regulations as the Franchise Tax Board may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and any other information which the Franchise Tax Board may by forms or regulations require with respect to that business.

(b) (1) Every person required to make a return under subdivision (a) shall furnish to each customer whose name is

required to be set forth in that return a written statement showing all of the following:

(A) The name and address of the person required to make that return.

(B) The information required to be shown on that return with respect to that customer.

(2) The written statement required under paragraph (1) shall be furnished to the customer on or before January 31 of the year following the calendar year for which the return under subdivision (a) was required to be made.

(c) For purposes of this section:

(1) The term "broker" includes any of the following:

(A) A dealer.

(B) A barter exchange.

(C) Any other person, who, for a consideration, regularly acts as a middleman with respect to personal property or services. A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person.

(2) The term "customer" means any person for whom the broker has transacted any business.

(3) The term "barter exchange" means any organization of members providing personal property or services who jointly contract to trade or barter that personal property or services.

(4) The term "person" includes any governmental unit and any agency or instrumentality thereof.

(d) In lieu of the return required by this section, a copy of the similar return filed with the Internal Revenue Service pursuant to Section 6045 of the Internal Revenue Code, and the regulations adopted thereto, may be filed with the Franchise Tax Board.

SEC. 69. Section 18807 of the Revenue and Taxation Code is amended to read:

18807. (a) The provisions of Section 1446 of the Internal Revenue Code shall apply to the extent that the amounts represent income from California sources, except as otherwise provided.

(b) (1) The rate of tax referred to in Section 1446(b) (2) (A) shall be the maximum tax rate specified in Section 17041, rather than the rate specified in Section (1) of the Internal Revenue Code.

(2) The rate of tax referred to in Section 1446(b) (2) (B) shall be the rate specified in Section 23151, 23181, or 23183, as applicable, rather than the rate specified in Section 11 of the Internal Revenue Code.

(c) The amendments made by the act adding this subdivision shall apply to taxable years beginning after December 31, 1989.

SEC. 70. Section 18934 of the Revenue and Taxation Code is amended to read:

18934. (a) Identifying numbers shall be required on state tax returns, statements, or other documents in accordance with the provisions of Section 6109 of the Internal Revenue Code, except as otherwise provided.

(b) Section 6109(e) of the Internal Revenue Code, relating to furnishing number for certain dependents, shall not apply.

SEC. 71. Section 19270 of the Revenue and Taxation Code is amended to read:

19270. (a) (1) (A) On or before the 10th of January each year, the Franchise Tax Board shall submit to the Legislature a report on all changes to the Internal Revenue Code enacted into law in the prior year. To the extent possible, the report shall contain an estimate of the revenue effect of conforming California law to each of those changes.

(B) In the event that changes to the Internal Revenue Code are enacted after September 15 of any year, the report described in subparagraph (A) shall be submitted to the Legislature within 120 days after signature by the President of the United States, rather than the 10th of January.

(2) The report required by this section shall be made available to the public.

(3) It is the intent of the Legislature that the policy committee of each house of the Legislature hold at least one public hearing on the report required by this section.

(b) For any introduced bill which proposes changes in any of the dates in Section 17024.5, the Franchise Tax Board shall prepare a complete analysis of the bill which describes all changes to state law which will automatically occur by reference to federal law as of the changed date. The Franchise Tax Board shall immediately update and supplement that analysis upon any amendment to the bill. That analysis shall be made available to the public and shall be submitted to the Legislature for publication in the daily journal of each house of the Legislature. The digest of the Legislative Counsel shall indicate that an analysis of the bill shall be prepared by the Franchise Tax Board and printed in the daily journal of each house of the Legislature.

SEC. 72. Section 20503 of the Revenue and Taxation Code is amended to read:

20503. (a) "Income" means adjusted gross income as defined in Section 17072 plus all of the following cash items:

(1) Public assistance and relief.

(2) Nontaxable amount of pensions and annuities.

(3) Social security benefits (except Medi-Care).

(4) Railroad retirement benefits.

(5) Unemployment insurance payments.

(6) Veteran's benefits.

(7) Exempt interest received from any source.

(8) Gifts and inheritances in excess of three hundred dollars ($300), other than transfers between members of the household. Gifts and inheritances includes noncash items.

(9) Amounts contributed on behalf of the contributor to a tax-sheltered retirement plan or deferred compensation plan.

(10) Temporary worker's compensation payments.

(11) Sick leave payments.

(12) Nontaxable military compensation as defined in Section 112 of the Internal Revenue Code.

(13) Nontaxable scholarship and fellowship grants as defined in Section 117 of the Internal Revenue Code.

(14) Nontaxable gain from the sale of a residence as defined in Section 121 of the Internal Revenue Code.

(15) Life insurance proceeds to the extent that such proceeds exceed the expenses incurred for the last illness and funeral of the deceased spouse of the claimant. "Expenses incurred for the last illness" includes unreimbursed expenses paid or incurred during the income calendar year and such expenses paid or incurred thereafter up until the date the claim is filed. For purposes of this paragraph, funeral expenses shall not exceed five thousand dollars ($5,000).

(16) If an alternative minimum tax is required to be paid pursuant to Chapter 2.1 (commencing with Section 17062) of Part 10, the amount of alternative minimum taxable income (whether or not cash) in excess of the regular taxable income.

(17) Annual winnings from the California Lottery in excess of six hundred dollars ($600) for the current year.

(b) For purposes of this chapter, total income shall be determined for the calendar year (or approved fiscal year ending within such calendar year) which ends within the fiscal year for which assistance is claimed.

(c) For purposes of Chapter 2 (commencing with Section 20581), Chapter 3 (commencing with Section 20625) and Chapter 3.5 (commencing with Section 20640), total income shall be determined for the calendar year ending immediately prior to the commencement of the fiscal year for which postponement is claimed. However, for claims filed after January 1, 1978, for the 1977–78 fiscal year, total income may, at the election of the claimant, be determined for the 1977 calendar year. Notwithstanding any other provision of law, for purposes of claimants electing to determine household income for the 1977 calendar year pursuant to this subdivision, the household income shall not exceed twenty thousand dollars ($20,000).

SEC. 73. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) The term "tax" means:

(1) The tax imposed under Chapter 2 (commencing with Section 23101).

(2) The tax imposed under Chapter 3 (commencing with Section 23501).

(3) The tax on unrelated business taxable income, imposed under Section 23731.

(4) The tax on S corporations imposed under Section 23802.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing

with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 26131.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453 —

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23609 (relating to research expenditures).

(D) The credit allowed by Section 23609.5 relating to clinical testing expenses.

(E) The credit allowed by Section 23610.5 (relating to low-income housing).

(F) Credits for taxes withheld under Section 26131.

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

SEC. 73.5. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) The term "tax" means:

(1) The tax imposed under Chapter 2 (commencing with Section 23101).

(2) The tax imposed under Chapter 3 (commencing with Section 23501).

(3) The tax on unrelated business taxable income, imposed under Section 23731.

(4) The tax on S corporations imposed under Section 23802.

(b) For purposes of Chapter 20 (commencing with Section 25661), Chapter 21 (commencing with Section 25901), Chapter 23 (commencing with Section 26131), and Chapter 24 (commencing with Section 26422), and for purposes of Sections 25401, 25551, and 25555, "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 26131.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453—

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23610.5 (relating to low-income housing).

(D) Credits for taxes withheld under Section 26131.

(E) The credit allowed by Section 23601.5 (relating to solar energy).

(F) The credit allowed by Section 23609 (relating to research expenditures).

(G) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit which has been repealed or made inoperative shall continue to be allowed to be carried over and applied against the "tax" until the credit has been exhausted.

SEC. 74. Section 23045 of the Revenue and Taxation Code is amended to read:

23045. For purposes of this part:

(a) The provisions of Section 7702 of the Internal Revenue Code, relating to life insurance contracts, shall apply.

(b) The provisions of Section 7702A of the Internal Revenue Code, relating to modified endowment contracts, shall apply.

SEC. 75. Section 23045.6 is added to the Revenue and Taxation Code, to read:

23045.6. The provisions of Section 7701(a)(20) of the Internal Revenue Code, relating to the definition of "employee," shall apply.

SEC. 76. Section 23051.5 of the Revenue and Taxation Code is amended to read:

23051.5. (a) (1) Unless otherwise specifically provided, the term "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, means Title 26 of the United States Code, including all amendments thereto, in effect on the specified date for the applicable taxable year as defined in subdivision (a) of Section 17024.5, except that for purposes of this part, "income year" shall be substituted for "taxable year" throughout that section.

(2) Unless otherwise specifically provided, uncodified provisions in federal laws enacted on or after January 1, 1987, that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part by a change in the specified date in paragraph (1) of subdivision (a) of Section 17024.5, shall be applicable to the same income years specified in that paragraph.

(b) Unless otherwise specifically provided, when applying any section of the Internal Revenue Code for purposes of this part, any provision therein relating to any of the following shall not be applicable for purposes of this part:

(1) Domestic International Sales Corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(2) Foreign Sales Corporations (FSC), as defined in Section 922(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b)

of the Internal Revenue Code.

(6) A foreign trust required to file a return under Section 6048 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Federal tax credits and carryovers of federal tax credits.

(c) When applying any provision of the Internal Revenue Code—

(1) For purposes of Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), and Chapter 3 (commencing with Section 23501), the term "taxable income" shall mean "net income" (as defined by Section 24341).

(2) For purposes of Article 2 (commencing with Section 23731) of Chapter 4, the term "taxable income" shall mean "unrelated business taxable income" (as defined by Section 23732).

(d) (1) The provisions contained in Sections 41 to 44, inclusive, and 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, shall not be applicable for income years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, shall not be applicable for income years beginning before January 1, 1987.

(3) For income years beginning on and after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(e) Unless otherwise specifically provided, when applying any section of the Internal Revenue Code for purposes of this part, the following shall apply:

(1) Due account shall be made for differences in federal and state terminology, effective dates, substitution of "income year" for "taxable year" where appropriate, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(2) Any provision of the Internal Revenue Code which is operative on or after the specified date for that income year shall also be operative on the same date for purposes of this part.

(3) Any provision of the Internal Revenue Code which is inoperative on or after the specified date for that income year shall also be inoperative on the same date for purposes of this part.

(4) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

(5) Any provision of the Internal Revenue Code which refers to a "corporation" shall, when applicable for purposes of this part, include a "bank" (as defined by Section 23039).

(6) Any reference to "chapter" shall mean Part 11 (commencing with Section 23001) of Division 2.

(f) In the absence of regulations of the Franchise Tax Board, where provisions of this part conform to the Internal Revenue Code, regulations adopted under the Internal Revenue Code shall govern

the interpretation of comparable provisions in this part, with due account for differences in federal and state terminology, effective dates, substitution of "income year" for "taxable year" where appropriate, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(g) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed in accordance with the Internal Revenue Code or regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise expressly provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board at the time and in the manner which may be required by the Franchise Tax Board.

(h) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (g) shall be applicable with respect to any such application or consent.

SEC. 77. Section 23058 of the Revenue and Taxation Code is amended to read:

23058. Unless otherwise specifically provided therein, the provisions of any act:

(a) Which affect the imposition or computation of taxes, additions to tax other than Section 25954, or penalties shall be applied to income years beginning on or after January 1 of the year in which the act becomes law.

(b) Which change the provisions of Sections 25561 to 25563, inclusive, (relating to payment of estimated tax) or Section 25954 (relating to underpayment of estimated tax) shall be applied to income years beginning on or after January 1 of the year immediately following the year in which the act becomes law.

(c) Which otherwise affect the provisions of this part shall be applied on and after the date the act becomes law.

SEC. 77.3. Section 23453 of the Revenue and Taxation Code is amended to read:

23453. (a) There shall be allowed as a credit against the regular tax (as defined by subdivision (c) of Section 23455), for any taxable year, an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by subdivision (c) of Section 23455, reduced by the sum of the credits allowable under this part other than that portion

of any credit which reduces the tax below the tentative minimum tax as provided in paragraph (1) of subdivision (d) of Section 23036.

SEC. 77.6. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows:

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(3) The amendments to Section 56(a)(6) of the Internal Revenue Code made by Section 10202(d) of Public Law 100-203, relating to minimum tax, shall not apply.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) (1) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(2) (A) If there was a deferral of preference tax under former Section 23405 for any income year beginning before January 1, 1988, and the amount of the deferred tax has not been paid for any income year beginning before January 1, 1988, the amount of the net operating loss carryovers which may be carried to income years beginning after December 31, 1987, for purposes of this chapter, shall be reduced by the amount of the tax preferences attributable to the deferred tax which has not been paid.

(B) In the case of a net operating loss allowed to be carried forward under subdivision (e) of Section 24416, subparagraph (A) shall apply to the extent that such a loss would have resulted in a deferred tax under prior law.

(d) (1) Section 56(f)(2)(B), relating to adjustments for certain taxes, is modified to read: The amount determined under subparagraph (A) shall be appropriately adjusted to disregard any tax on or measured by income.

(2) The last sentence of Section 56(f)(2)(B), relating to taxes imposed by a foreign country or possession, shall not be applicable.

(3) Section 56(f)(2)(C)(i) of the Internal Revenue Code, relating to consolidated returns, is modified to substitute "combined report" for "consolidated return."

(4) Section 56(f)(2)(C)(ii) of the Internal Revenue Code, relating to treatment of dividends of related corporations, is modified to read: Adjusted net book income shall take into account only those dividends (or portions thereof) which have been included in net income for purposes of determining the regular tax.

(5) Section 56(f) (2) (F) of the Internal Revenue Code, relating to treatment of dividends from 936 corporations, shall not be applicable.

(6) Section 56(f) (2) (G) of the Internal Revenue Code, relating to rules for Alaska native corporations, shall not be applicable.

(7) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in book income shall not exceed the amount of interest income included for purposes of the regular tax.

(8) Appropriate adjustments shall be made to limit deductions from book income for interest expense in accordance with Sections 24344 and 24425.

(e) Section 56(g) (4) (A) of the Internal Revenue Code shall be modified to provide that in the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, and not described in clause (i), (ii), or (iii) of Section 56(g) (4) (A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straight-line method for each income year of the useful life (determined without regard to Section 24354.2 or 24381) for which the taxpayer has held the property.

(f) (1) Section 56(g) (4) (C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(B) Section 56(g) (4) (C) (ii) of the Internal Revenue Code, relating to special rule for 100 percent dividends, shall not be applicable.

(C) Section 56(g) (4) (C) (iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(2) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(3) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with the provisions of Sections 24344 and 24425.

SEC. 78. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For income years beginning on or after January 1, 1987, and before January 1, 1993, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) The applicable percentage shall be 8 percent of the excess of the qualified research expenses for the income year over the base period research expenses and 12 percent of the basic research payments.

(b) "Qualified research" and "basic research" shall include only research conducted in California.

(c) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that "basic research," for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(d) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) (1) Section 41(i) of the Internal Revenue Code, relating to termination, shall not apply.

(2) This section shall apply only to amounts incurred on or after January 1, 1988, and paid or incurred before January 1, 1993.

(3) In the case of any income year which begins before January 1, 1988, and ends after December 31, 1987, any amount for any base period with respect to that income year shall be the amount which bears the same ratio to that amount for that base period as the number of days in that income year after December 31, 1987, bears to the total number of days in that income year.

(4) In the case of any income year which begins before January 1, 1993, and ends after December 31, 1992, any amount for any base period with respect to that income year shall be the amount which bears the same ratio to that amount for that base period as the number of days in that income year before January 1, 1993, bears to the total number of days in that income year.

(f) This section shall remain in effect only until December 1, 1993, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d), until the credit has been exhausted.

SEC. 79. Section 23609.5 of the Revenue and Taxation Code is amended to read:

23609.5. For income years beginning before January 1, 1993, there shall be allowed as a credit against the "tax," (as defined by Section

23036) an amount determined in accordance with Section 28 of the Internal Revenue Code, except as follows:

(a) The applicable percentage shall be 15 percent of the qualified clinical testing expenses for the income year.

(b) Qualified clinical testing expenses include only those expenses paid or incurred by the taxpayer for such testing conducted in California.

(c) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the tax in the following year, and succeeding income years if necessary, until the credit has been exhausted.

(d) (1) Section 28(e) of the Internal Revenue Code, relating to termination, shall not apply.

(2) This section shall remain in effect only until December 1, 1993, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (c), until the credit has been exhausted.

SEC. 80. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required

by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

SEC. 80.1. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code or the Thermal Airport Development Project designated pursuant to Section 7102 of that code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone or the Thermal Airport Development Project.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit allowed under this section

exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code) or the Thermal Airport Development Project (designated pursuant to Section 7102 of that code).. The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(h) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1995, deletes or extends that date.

SEC. 80.2. Section 23612 is added to the Revenue and Taxation Code, to read:

23612. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case

of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) In the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), the amount of the credit provided by this section shall not in any year exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the program area (as defined in Section 7082 of the Government Code). The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17.

(g) In the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b), the amount of the credit provided by this section in any year shall not exceed the amount of tax which would be imposed on the income attributed to business activities of the taxpayer within the enterprise zone (designated pursuant to Section 7073 of the Government Code) The amount of that attributed income shall be determined in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17

(h) This section shall become operative on January 1, 1995.

SEC. 80.4. Section 23617 of the Revenue and Taxation Code is amended to read:

23617. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of either or both of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services such as those which identify local child care services, offer information describing these resources to

employees, and make referrals of employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars ($50,000) for any income year.

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or near-site centers by one or more employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(e) (1) In the case where the credit allowed under subdivision (b) for the income year exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(2) If the credit carryovers from preceding income years allowed under paragraph (1) plus the credit allowed for the income year under subdivision (b) would exceed an aggregate total of fifty thousand dollars ($50,000), then the credit allowed to reduce the "tax" under this section for the income year shall be limited to fifty thousand dollars ($50,000) and the amount in excess of the fifty thousand dollars ($50,000) limit may be carried over and applied against the "tax" in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding income year, does not exceed fifty thousand dollars ($50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 24371.5. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) (1) In order to be eligible for the credit allowed under subparagraph (A) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care

program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(j) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (e), until the credit has been exhausted.

SEC. 80.5. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any income year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan or a part-time qualified care plan.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, and in-home care or home-provider care, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(3) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(5) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401 (c) (1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the

total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(k) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 80.6. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For income years beginning on or after January 1, 1988, and before January 1, 1992, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 50 percent of the cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to a qualified care plan made on behalf of any dependent of the taxpayer's California employee who is under the age of 15.

(2) The amount of the credit allowed by this section in any income

year shall not exceed six hundred dollars ($600) for contributions to a full-time qualified care plan or a part-time qualified care plan.

(c) For purposes of this section:

(1) "Qualified care plan" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code which is a specialized center with respect to short-term illnesses of an employee's dependents, provided the facility is located in this state and is operated under the authority of a license when required by state law.

(2) "Specialized center" means a facility which provides care to mildly ill children and which may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross infection.

(3) "Full-time qualified care plan" means an average of eight or more hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(4) "Part-time qualified care plan" means an average of two to eight hours of dependent care per day for at least 42 weeks per year in a qualified care plan.

(5) "Contributions" include employer reimbursements to employees for the employee's qualified care plan expenses, or direct payments to child care programs or providers, or both.

(6) The term "employee" includes, for any year, an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(d) In the case where an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) In the case where the child care received is of less than 42-week duration, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) In the case where the credit allowed under this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care

provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under paragraph (1) of subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the income year which is equal to the amount of the credit allowed under this section.

(j) In the case where the credit is taken by an employer for contributions to a qualified care plan which is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the income year for which the credit is allowed.

(k) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(*l*) This section shall remain in effect only until December 1, 1992, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f), until the credit has been exhausted.

SEC. 81. Section 23621 of the Revenue and Taxation Code is amended to read:

23621. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 10 percent of the amount of wages paid to each employee who is certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

The credit under this section shall not apply to an individual unless, on or before the day on which that individual begins work for the employer, the employer:

(1) Has received a certification from the Employment Development Department, or

(2) Has requested in writing that certification from the Employment Development Department.

For purposes of this subdivision, if on or before the day on which the individual begins work for the employer, the individual has received from the Employment Development Department a written preliminary determination that he or she is a member of a targeted group, then the requirement of paragraph (1) or (2) shall be applicable on or before the fifth day on which the individual begins work for the employer.

(b) The credit under this section shall not apply to wages paid in excess of three thousand dollars ($3,000) during an income year by a taxpayer to the same individual. With respect to each qualified

employee, the aggregate credit under this section shall not exceed six hundred dollars ($600).

(c) The credit under this section shall not apply to wages paid to an individual:

(1) Who is a dependent, as described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code, of an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the taxpayer (determined with the application of Section 267(c) of the Internal Revenue Code); or

(2) Who is a dependent (as described in paragraph (9) of Section 152(a) of the Internal Revenue Code) of an individual described in paragraph (1).

(d) The credit under this section shall not apply to wages paid to an individual if, prior to the hiring date of that individual, that individual had been employed by the employer at any time during which he or she was not certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

(e) If the certification of an employee has been revoked pursuant to subdivision (c) of Section 328 of the Unemployment Insurance Code, the credit under this section shall not apply to wages paid by the employer after the date on which notice of revocation is received by the employer.

(f) The credit under this section shall be in addition to any deduction under this part to which the taxpayer may be entitled, if any.

(g) The credit provided by this section shall be applied to wages paid to each qualifying employee during the 24-month period beginning on the date the employee begins working for the taxpayer.

(h) (1) A taxpayer may elect to have this section not apply for any income year.

(2) An election under paragraph (1) for any income year may be made (or revoked) at any time before the expiration of the four-year period beginning on the last date prescribed by law for filing the return for that income year (determined without regard to extensions).

(3) An election under paragraph (1) (or revocation thereof) shall be made in any manner which the Franchise Tax Board may prescribe.

(i) (1) In the case of a successor employer referred to in Section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the credit under this section with respect to wages paid by that successor employer shall be made in the same manner as if those wages were paid by the predecessor employer referred to in that section.

(2) No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by that employee for another person unless the amount reasonably expected to be received by the employer for those

services from that other person exceeds the remuneration paid by the employer to that employee for those services.

(j) The term "wages" shall not include either of the following:

(1) Payments defined in Section 51(c)(3) of the Internal Revenue Code, relating to payments for services during labor disputes.

(2) Any amounts paid or incurred to an individual who begins work for an employer after December 31, 1989.

SEC. 81.5. Section 23621 of the Revenue and Taxation Code is amended to read:

23621. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 10 percent of the amount of wages paid to each employee who is certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

The credit under this section shall not apply to an individual unless, on or before the day on which that individual begins work for the employer, the employer:

(1) Has received a certification from the Employment Development Department, or

(2) Has requested in writing that certification from the Employment Development Department.

For purposes of this subdivision, if on or before the day on which the individual begins work for the employer, the individual has received from the Employment Development Department a written preliminary determination that he or she is a member of a targeted group, then the requirement of paragraph (1) or (2) shall be applicable on or before the fifth day on which the individual begins work for the employer.

(b) The credit under this section shall not apply to wages paid in excess of three thousand dollars ($3,000) during an income year by a taxpayer to the same individual. With respect to each qualified employee, the aggregate credit under this section shall not exceed six hundred dollars ($600).

(c) The credit under this section shall not apply to wages paid to an individual:

(1) Who is a dependent, as described in paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code, of an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the taxpayer (determined with the application of Section 267(c) of the Internal Revenue Code); or

(2) Who is a dependent (as described in paragraph (9) of Section 152(a) of the Internal Revenue Code) of an individual described in paragraph (1).

(d) The credit under this section shall not apply to wages paid to an individual if, prior to the hiring date of that individual, that individual had been employed by the employer at any time during which he or she was not certified by the Employment Development Department to meet the requirements of Section 328 of the Unemployment Insurance Code.

(e) If the certification of an employee has been revoked pursuant to subdivision (c) of Section 328 of the Unemployment Insurance Code, the credit under this section shall not apply to wages paid by the employer after the date on which notice of revocation is received by the employer.

(f) The credit under this section shall be in addition to any deduction under this part to which the taxpayer may be entitled, if any.

(g) The credit provided by this section shall be applied to wages paid to each qualifying employee during the 24-month period beginning on the date the employee begins working for the taxpayer.

(h) (1) A taxpayer may elect to have this section not apply for any income year.

(2) An election under paragraph (1) for any income year may be made (or revoked) at any time before the expiration of the four-year period beginning on the last date prescribed by law for filing the return for that income year (determined without regard to extensions).

(3) An election under paragraph (1) (or revocation thereof) shall be made in any manner which the Franchise Tax Board may prescribe.

(i) (1) In the case of a successor employer referred to in Section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the credit under this section with respect to wages paid by that successor employer shall be made in the same manner as if those wages were paid by the predecessor employer referred to in that section.

(2) No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by that employee for another person unless the amount reasonably expected to be received by the employer for those services from that other person exceeds the remuneration paid by the employer to that employee for those services.

(j) The term "wages" shall not include either of the following:

(1) Payments defined in Section 51(c)(3) of the Internal Revenue Code, relating to payments for services during labor disputes.

(2) Any amounts paid or incurred to an individual who begins work for an employer after December 31, 1993.

SEC. 82. Section 23701d of the Revenue and Taxation Code is amended to read:

23701d. (a) Corporations, community chests or trusts, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to

influence legislation, (except as otherwise provided in Section 23704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section or Section 501(c)(3) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board; that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. The irrevocable dedication requirement shall not be a sole basis for revocation of an exempt determination made by the Franchise Tax Board prior to the effective date of this amendment.

(b) (1) In the case of a qualified amateur sports organization—

(A) The requirement of subdivision (a) that no part of its activities involve the provision of athletic facilities or equipment shall not apply.

(B) That organization shall not fail to meet the requirements of subdivision (a) merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if that organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

SEC. 83. Section 23701r of the Revenue and Taxation Code is amended to read:

23701r. (a) A political organization. However, a political organization shall be subject to tax under this part with respect to its "political organization taxable income" and such income shall be subject to tax as provided by Chapter 3 (commencing with Section 23501).

(b) For purposes of this section, the political organization taxable income of any organization for any taxable year is an amount equal to the excess over one hundred dollars ($100) (if any) of—

(1) The gross income for the taxable year (excluding any exempt function income), over

(2) The deductions allowed by this part which are directly

connected with the production of the gross income (excluding exempt function income).

(c) For purposes of this section, the term "exempt function income" means any amount received as—

(1) A contribution of money or other property,

(2) Membership dues, a membership fee or assessment from a member of the political organization, or

(3) Proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business,

to the extent such amount is segregated for use only for the exempt function of the political organization.

(d) For purposes of this part, if any political organization—

(1) Contributes any amount to or for the use of any political organization which is treated as exempt from tax under subdivision (a) of this section,

(2) Contributes any amount to or for the use of any organization described in paragraph (1) or (2) of Section 509(a) of the Internal Revenue Code of 1954, which is exempt from tax under Section 23701, or

(3) Deposits any amount in the General Fund or the Treasury of the United States or in the General Fund of any state or local government,

such amount shall be treated as an amount not diverted for the personal use of the candidate or any other person. No deduction shall be allowed under this part for the contribution or deposit of any amount described in the preceding sentence.

(e) For purposes of this section—

(1) The term "political organization" means a party, committee, association, fund, (including the trust of an individual candidate) or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. The term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under Section 162(a) of the Internal Revenue Code.

(3) The term "contributions" has the meaning given to such term by paragraph (2) of subdivision (b) of Section 24434.

(4) The term "expenditures" has the meaning given to such term by paragraph (3) of subdivision (b) of Section 24434.

(f) For purposes of paragraph (1) of subdivision (e), a separate segregated fund (within the meaning of Section 610 of Title 18 of the United States Code or of any similar state statute, or within the meaning of any state statute which permits the segregation of dues money for exempt functions, within the meaning of paragraph (2) of subdivision (e)) which is maintained by an organization described in Sections 23701a through 23701p or Section 23701s which is exempt from tax under Section 23701 shall be treated as a separate organization.

(g) (1) For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of paragraph (3)) for nomination or election to, any federal, state, or local elective public office for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) In the case of any fund described in paragraph (1) the exempt function shall be only the preparation and circulation of the newsletter.

(3) For purposes of paragraph (1), "candidate" means with respect to any federal, state, or local elective public office, an individual who does both of the following:

(A) Publicly announces that he or she is a candidate for nomination or election to that office.

(B) Meets the qualifications prescribed by law to hold that office.

(h) The requirements set forth in subdivisions (a), (b) and (c) of Section 23701 shall not apply to a political organization or newsletter fund described in this section. However, in the case of a corporation incorporated or organized in this state or qualified to do business in this state, such corporation shall either pay the minimum tax provided in Section 23153 or obtain a certificate of exemption from the Franchise Tax Board before the corporation files with the Secretary of State its articles of incorporation or a duly certified copy thereof.

(i) The requirements set forth in Section 23772 or Section 23774 shall not apply to a political organization or newsletter fund. Further, the requirements set forth in Sections 18405, 18405.1 and 25401 shall not apply to a political organization or newsletter fund described in this section, except that if it has political organization taxable income for any taxable year, the political organization shall be required to file income tax returns or statements as determined by the Franchise Tax Board under Chapter 3 (commencing with Section 23501).

SEC. 84. Section 23701s of the Revenue and Taxation Code is amended to read:

23701s. A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(a) Under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan,

for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(b) Those benefits are payable to employees under a classification which is set forth in the plan and which is found by the Franchise Tax Board not to be discriminatory in favor of employees who are highly compensated employees within the meaning of Section 414(q) of the Internal Revenue Code, and

(c) Those benefits do not discriminate in favor of employees who are highly compensated employees within the meaning of Section 414(q) of the Internal Revenue Code. A plan shall not be considered discriminatory within the meaning of this paragraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(d) In the case of a plan under which an employee may designate certain contributions as deductible-

(1) Those contributions do not exceed the amount with respect to which a deduction is allowable under Section 219(b)(3) of the Internal Revenue Code,

(2) Requirements similar to the requirements of Section 401(k)(3)(A)(ii) of the Internal Revenue Code are met with respect to those elective contributions.

(3) Those contributions are treated as elective deferrals for purposes of Section 402(g) (other than paragraph (4) thereof) of the Internal Revenue Code, and

(4) The requirements of Section 401(a)(30) of the Internal Revenue Code are met.

SEC. 85. Section 23701v of the Revenue and Taxation Code is amended to read:

23701v. (a) An organization of owners of manufactured homes or mobilehomes, who are tenants in a mobilehome park, formed for the purpose of purchasing the mobilehome park pursuant to Section 50561 of the Health and Safety Code.

(b) An organization shall not fail to meet the requirements of subdivision (a) merely because it manages, maintains, or cares for the mobilehome park it has purchased.

SEC. 86. Section 23704 of the Revenue and Taxation Code is amended to read:

23704. For purposes of this part, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if:

(a) Such organization is organized and operated solely:

(1) To perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in Section 23701d and exempt from taxation under Section 23701, would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the

purchasing of insurance on a group basis), warehousing, billing and collection, food, clinical, industrial engineering, laboratory, laundry, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(2) To perform such services solely for two or more hospitals, and for no other individuals or organizations, each of which is:

(A) An organization described in Section 23701d which is exempt from taxation under Section 23701;

(B) A constituent part of an organization described in Section 23701d which is exempt from taxation under Section 23701 and which, if organized and operated as a separate entity, would constitute an organization described in Section 23701d; or

(C) Owned and operated by the United States, the state, a county, or political subdivision, or an agency or instrumentality of any of the foregoing;

(b) Such organization is organized and operated on a cooperative basis and allocates or pays, within 8½ months after the close of its income year, all net earnings to members on the basis of services performed for them; and

(c) If such organization has capital stock, all of such stock outstanding is owned by its members.

For purposes of this part, any organization which, by reason of the preceding sentence, is an organization described in Section 23701d and exempt from taxation under Section 23701, shall be treated as a hospital and as an organization referred to in Section 23736(e).

SEC. 87. Section 23704.6 of the Revenue and Taxation Code is amended to read:

23704.6. (a) An organization which—

(1) Was exempt (or was determined by the Franchise Tax Board to be exempt) from taxation under Section 23701 by reason of being an organization described in Section 23701d, and

(2) Is not an organization described in Section 23701d:

(A) By reason of carrying on propaganda, or otherwise attempting, to influence legislation, or

(B) By reason of participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office,

shall not at any time thereafter be treated as an organization described in Section 23701f.

(b) The Franchise Tax Board shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of subdivision (a), including regulations relating to a direct or indirect transfer of all or part of the assets of an organization to an organization controlled (directly or indirectly) by the same person or persons who control the transferor organization.

(c) Subdivision (a) shall not apply to any organization which is a disqualified organization within the meaning of Section 23704.5(s) (relating to churches, etc.) for the taxable year immediately preceding the first taxable year for which such organization is

described in paragraph (2) of subdivision (a).

(d) This section shall apply to activities occurring after the enactment of this section by the 1977–78 Legislature.

SEC. 88. Section 23732 of the Revenue and Taxation Code is amended to read:

23732. The provisions of Section 512 of the Internal Revenue Code, relating to unrelated business taxable income, shall apply as amended by Public Law 99-514, except as otherwise provided.

(a) Section 512(a)(2) of the Internal Revenue Code, relating to special rules for foreign organizations, shall not be applicable.

(b) Section 512(a)(3) of the Internal Revenue Code, relating to special rules applicable to certain organizations, shall be modified as follows:

(1) The reference to Section 501(c)(7) of the Internal Revenue Code, relating to clubs organized for pleasure, recreation, and other nonprofitable purposes, shall be modified to refer to Section 23701g.

(2) The reference to Section 501(c)(9) of the Internal Revenue Code, relating to voluntary employees' beneficiary associations, shall be modified to refer to Section 23701i.

(3) The reference to Section 501(c)(17) of the Internal Revenue Code, relating to trusts providing for payment of supplemental unemployment compensation benefits, shall be modified to refer to Section 23701n.

(4) The reference to Section 501(c)(20) of the Internal Revenue Code, relating to qualified group legal services plans, shall be modified to refer to Section 23701q.

(c) Section 512(b)(10) of the Internal Revenue Code, relating to charitable contributions, shall be modified to provide that such deductions shall not exceed 5 percent of the unrelated business taxable income, rather than 10 percent.

SEC. 89. Section 23733 of the Revenue and Taxation Code is repealed.

SEC. 90. Section 23735 of the Revenue and Taxation Code is amended to read:

23735. (a) The provisions of Section 514 of the Internal Revenue Code, relating to unrelated debt-financed income, shall be applicable, except as otherwise provided.

(b) The provisions of Section 10214 of Public Law 100-203, relating to the treatment of certain partnership allocations, shall not apply.

SEC. 91. Section 23772 of the Revenue and Taxation Code is amended to read:

23772. (a) For the purposes of this part—

(1) Except as provided in paragraph (2) every organization exempt from taxation under Section 23701 and every trust treated as a private foundation because of Section 4947(a)(1) of the Internal Revenue Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the laws under this part as the Franchise Tax Board may by rules or regulations prescribe,

and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Franchise Tax Board may from time to time prescribe. The return shall be filed on or before the 15th day of the fifth full calendar month following the close of the income year.

(2) Exceptions from filing—

(A) Mandatory exceptions—Paragraph (1) shall not apply to—

(i) Churches, their integrated auxiliaries, and conventions or association of churches,

(ii) Any organization (other than a private foundation as defined in Section 23709), the gross receipts of which in each taxable year are normally not more than twenty-five thousand dollars ($25,000), or

(iii) The exclusively religious activities of any religious order,

(B) Discretionary exceptions—The Franchise Tax Board may permit the filing of a simplified return for organizations based on either gross receipts or total assets or both gross receipts and total assets, or may permit the filing of an information statement (without fee), or may permit the filing of a group return for incorporated or unincorporated branches of a state or national organization where it determines that an information return is not necessary to the efficient administration of this part.

(3) An organization that is required to file an annual information return shall pay a filing fee of ten dollars ($10) on or before the due date for filing the annual information return (determined with regard to any extension of time for filing the return) required by this section. In case of failure to pay the fee on or before such due date unless it is shown that such failure is due to reasonable cause, the filing fee shall be twenty-five dollars ($25). All collection remedies provided in Chapter 23 (commencing with Section 26131) of this part shall be applicable to collection of the filing fee. However, the filing fee shall not apply to the organization described in paragraph (4).

(4) Paragraph (3) shall not apply to: (A) a religious organization exempt under Section 23701d; (B) an educational organization exempt under Section 23701d, if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; (C) a charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under Section 23701d, if such organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported by contributions of the general public; (D) an organization exempt under Section 23701d, if such organization is operated, supervised, or controlled by or in connection with a religious organization described in subparagraph (A).

(b) Every organization described in Section 23701d which is subject to the requirements of subdivision (a) shall furnish annually information, at such time and in such manner as the Franchise Tax

Board may by rules or regulations prescribe, setting forth—

(1) Its gross income for the year,

(2) Its expenses attributable to such income and incurred within the year,

(3) Its disbursements within the year for the purposes for which it is exempt,

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of such year,

(5) The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors,

(6) The names and addresses of its foundation manager (within the meaning of Section 4946 of the Internal Revenue Code) and highly compensated employees,

(7) The compensation and other payments made during the year to each individual described in paragraph (6),

(8) In the case of an organization with respect to which an election under Section 23704.5 is effective for the taxable year, the following amounts for such organization for such taxable year:

(A) The lobbying expenditures (as defined in Section 23740(c)(1)).

(B) The lobbying nontaxable amount (as defined in Section 23740(c)(2)).

(C) The grassroots expenditures (as defined in Section 23740(c)(3)).

(D) The grassroots nontaxable amount (as defined in Section 23740(c)(4)). For purposes of this paragraph, if Section 23740(f) applies to the organization for the taxable year, the organization shall furnish the amounts with respect to the affiliated group as well as with respect to the organization.

(9) Such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in Sections 23701a to 23701w, inclusive (other than Sections 23701d, 23701k, and 23701t), as the Franchise Tax Board may require to prevent either of the following:

(A) Diversion of funds from the organization's exempt purpose.

(B) Misallocation of revenue or expense, and

(10) Any other relevant information as the Franchise Tax Board may prescribe.

(c) In addition to the above annual return any organization which is required to file an annual report under Section 6056 of the Internal Revenue Code will furnish a copy of the report to the Franchise Tax Board at the time the annual return is due.

(d) For the purposes of this part—

(1) In the case of a failure to file a return required under this section on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the

same manner as tax) by the exempt organization or trust failing so to file, five dollars ($5) for each month or part thereof during which such failure continues, but the total amount imposed hereunder on any organization for failure to file any return shall not exceed forty dollars ($40).

(2) The Franchise Tax Board may make written demand upon a private foundation failing to file under paragraph (1) of this subdivision or subdivision (c) specifying therein a reasonable future date by which such filing shall be made, and if such filing is not made on or before such date, and unless it is shown that failure so to file is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the person failing so to file, in addition to the penalty prescribed in paragraph (1), a penalty of five dollars ($5) each month or part thereof after the expiration of the time specified in the written demand during which such failure continues, but the total amount imposed hereunder on all persons for such failure to file shall not exceed twenty-five dollars ($25). If more than one person is liable under this paragraph for a failure to file, all such persons shall be jointly and severally liable with respect to such failure. The term "person" as used herein means any officer, director, trustee, employee, member, or other individual who is under a duty to perform the act in respect of which the violation occurs.

(e) The reporting requirements and penalties shall be applicable for income years beginning after December 31, 1970, except that the provisions of subparagraph (B) of paragraph (2) of subdivision (a) shall apply to income years ending after December 31, 1970.

SEC. 92. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) (1) A corporation may not elect to be treated as an "S corporation" unless it has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code for the same year.

(2) For income years beginning in 1987—

(A) A corporation which has in effect a valid federal election, for the income year beginning in 1987, shall be deemed to have elected to be treated as an "S corporation" for purposes of this part, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(B) A corporation to which subparagraph (A) applies, but which is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in such form and in such manner as the Franchise Tax Board may prescribe.

(C) A corporation which is deemed to have elected to be treated as an "S corporation" under subparagraph (A) shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to

be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(3) For income years beginning in 1988 or 1989 —

(A) A corporation which had in effect a valid federal election for the preceding year, but was a "C corporation" for purposes of this part for that preceding year, may elect to be treated as an "S corporation" for purposes of this part by making an election in accordance with the provisions of Section 1362 of the Internal Revenue Code in such form and in such manner as the Franchise Tax Board may prescribe.

(B) A corporation which did not have in effect a valid federal election for the preceding year and which makes a federal election for the income year under Section 1362(a) of the Internal Revenue Code shall be deemed to have made an election to be treated as an "S corporation" for purposes of this part on the same date as the date of its federal election, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(C) A corporation to which subparagraph (B) applies, but which is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in such form and in such manner as the Franchise Tax Board may prescribe.

(D) A corporation which elects to be treated as an "S corporation" under subparagraph A for an income year beginning in 1988 shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(4) For income years beginning on or after January 1, 1990—

(A) An election under Section 1362(a) of the Internal Revenue Code, which is first effective for an income year beginning on or after January 1, 1990, shall be an election to which subdivision (g) of Section 23051.5 applies and shall be deemed to have been made for purposes of this part on the same date as the date of the federal election, unless the corporation files a California election to be treated as a "C corporation" for purposes of this part.

(i) The federal "S" election shall be reported for purposes of this part in the form and manner as prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal election under Section 1362(a).

(ii) The California election to be a "C corporation" may only be made by a corporation qualified to do business in California and shall be made in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal "S" election under Section 1362(a) of the Internal Revenue Code.

(B) A corporation, which has in effect a valid election under

Section 1362(a) of the Internal Revenue Code, but which is a "C corporation" for purposes of this part may elect to be treated as an "S corporation" by making an election in the form and manner as prescribed by the Franchise Tax Board at the time required for making an "S" election under Section 1362(a) of the Internal Revenue Code.

(C) In the event a corporation becomes subject to this part by qualifying to do business in California after filing a federal election to be treated as a "S corporation," the corporation is deemed to have made an election to be treated as a "S corportion" for purposes of this part, unless the corporation files a California election in accordance with clause (ii) to be treated as a "C corporation" for purposes of this part.

(i) The federal "S" election shall be reported for purposes of this part within two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Francise Tax Board.

(ii) The California election to be a "C corporation" shall be made no later than two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Franchise Tax Board.

(D) (1) A corporation that is not qualified to do business in California, but which is treated as an "S corporation" for federal purposes, shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(2) If a corporation described in paragraph (1) elected to be treated as a "C corporation" under this section prior to its amendment by the act adding this paragraph during the 1989–90 Regular Session, that election shall be revoked for income years beginning on or after January 1, 1990. The corporation shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(E) For purposes of this section, "qualified to do business in California" or "qualifying to do business in California" means incorporating or obtaining a certificate of qualification pursuant to the Corporations Code.

(b) If a corporation subject to tax under this part elects to be treated as an "S corporation" and has one or more shareholders who are nonresidents of this state or is a trust with a nonresident fiduciary, each of the following shall be required:

(1) Each nonresident shareholder or fiduciary shall file with the return a statement of consent by that shareholder or fiduciary to be subject to the jurisdiction of the State of California to tax the shareholder's pro rata share of the income attributable to California sources.

(2) An "S corporation" shall include in its return for each income year a list of shareholders in the form and in the manner prescribed by the Franchise Tax Board.

(3) Failure to meet the requirements of this subdivision shall be grounds for retroactive revocation of the election pursuant to this chapter.

(c) Except as provided in subdivision (d), a corporation which makes a valid election to be treated as an "S corporation" for purposes of this part shall not be included in a combined report pursuant to Article 1 (commencing with Section 25101) of Chapter 17.

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations electing to be treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of such group or represents an evasion of tax by one or more members of such group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the election of any corporation to be treated as an "S corporation."

(e) The tax for a "C corporation" for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e) (5) of the Internal Revenue Code.

(f) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the "S corporation" election for purposes of Part 10 (commencing with Section 17001) and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal termination for that year under Section 1362(d) of the Internal Revenue Code.

(3) A corporation which is qualified to do business in California and has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, may revoke its "S" election for purposes of this part without revoking its federal election. The revocation for purposes of this part shall be made by providing a written notification to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board which includes the California

corporation number and meets the requirements of Section 1362(d)(1) of the Internal Revenue Code.

(g) For income years beginning on or after January 1, 1990, if a corporation, which has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, fails to make a "C corporation" election under clause (ii) of subparagraphs (A) and (C) of paragraph (4) of subdivision (a) or to terminate by revocation under paragraph (3) of subdivision (f), the corporation shall be treated as an "S corporation" pursuant to subparagraph (A) of paragraph (4).

SEC. 93. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an S corporation, shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of 2½ percent rather than the rate specified in those sections.

(2) In the case of an "S corporation" which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151 and Section 23184 shall be applicable.

(3) An "S corporation" shall not be subject to the alternative minimum tax (or preference tax) imposed under Section 23400.

(c) An "S corporation" shall be subject to the minimum tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an "S corporation" shall be allowed a deduction under Section 24416 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an "S corporation" for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between "C years" and "S years", shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1) of this subdivision.

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an "S corporation," to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an "S corporation" shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b)—

(1) An "S corporation" shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual.

(B) For purposes of this paragraph, the "adjusted gross income" of the "S corporation" shall be equal to its "net income," as determined under Section 24341 with the modifications required by this subdivision.

(g) The amendments to Section 1363 of the Internal Revenue Code made by Section 10227 of Public Law 100-203, relating to recapture of LIFO amount in the case of elections by S corporations, shall not apply.

SEC. 94. Section 23803 of the Revenue and Taxation Code is amended to read:

23803. (a) (1) With respect to credits which are otherwise allowed to reduce the taxes imposed under this part:

(A) The amount of any credit to be claimed shall be limited to one-third of the amount otherwise allowable.

(B) (i) Any unused portion of the credit allowable under subparagraph (A) (one-third of the total credit) shall be allowed to be carried forward and shall not be subject to additional reductions under subparagraph (A) in later years.

(ii) No carryforward shall be allowed for the portion of the credit denied under subparagraph (A) (two-thirds of the total credit).

(C) Credits carried forward from income years beginning prior to the first income year in which the corporation is treated as an "S corporation" under this part, shall be reduced in accordance with subparagraph (A) for that first income year and shall not be subject to additional reductions under subparagraph (A) in later years.

(D) The provisions of paragraphs (2) and (3) of subdivision (f) of Section 23802 shall be applied prior to the reduction required by subparagraph (A).

(E) No portion of any credit to which this paragraph applies shall be passed through to the shareholders of the "S corporation."

(F) The provisions of this paragraph shall not affect the amount

of any credit computed under Part 10 (commencing with Section 17001) for pass through to shareholders in accordance with the provisions of Section 1366 of the Internal Revenue Code.

(2) With respect to credits which are allowed to the "S corporation" only because it is treated in the same manner as an individual, the provisions of Section 1366(a) of the Internal Revenue Code shall be modified to provide that the shareholder's pro rata share of the corporation's credits shall include the credit for political contributions allowed under Section 17053.14.

(b) Section 1366(f) of the Internal Revenue Code, relating to special rules, shall be modified as follows:

(1) The amount of tax used to compute the reduction allowed by Section 1366(f)(2) shall be the amount of tax imposed on built-in gains under this part.

(2) The amount of tax used to compute the reduction allowed by Section 1366(f)(3) shall be the amount of tax imposed on excess net passive income under this part.

SEC. 94.5. Section 23805 of the Revenue and Taxation Code is repealed.

SEC. 95. Section 24274 of the Revenue and Taxation Code is amended to read:

24274. The provisions of Section 81 of the Internal Revenue Code, relating to increases in vacation pay suspense account, shall apply as amended by Public Law 99-514.

SEC. 96. Section 24276 is added to the Revenue and Taxation Code, to read:

24276. The provisions of Section 90 of the Internal Revenue Code, relating to illegal federal irrigation subsidies, shall apply to water delivered to the taxpayer on or after January 1, 1988, in income years beginning on or after January 1, 1989.

SEC. 97. Section 24306 of the Revenue and Taxation Code is amended to read:

24306. (a) Section 133 of the Internal Revenue Code relating to securities acquisition loan shall be applicable except as otherwise provided.

(b) (1) This section shall apply only to income years beginning on or after January 1, 1990, and before January 1, 1995.

(2) This section shall remain in effect only until December 1, 1995, and as of that date is repealed.

SEC. 98. Section 24343 of the Revenue and Taxation Code is amended to read:

24343. A deduction shall be allowed for trade or business expenses and the amount shall be determined in accordance with Section 162 of the Internal Revenue Code, except that references to Section 170 of the Internal Revenue Code shall be modified to refer to Sections 24357 to 24359.1, inclusive, of this part.

SEC. 99. Section 24349.1 of the Revenue and Taxation Code is amended to read:

24349.1. (a) Section 280F of the Internal Revenue Code, relating

to limitations on depreciation for luxury automobiles and certain property used for personal purposes, shall be applicable.

(b) Except as provided in subdivision (c), Section 280F of the Internal Revenue Code shall be modified as follows:

(1) The terms "deduction" or "recovery deduction," relating to amounts allowable as a deduction under Section 168 of the Internal Revenue Code, mean the amount allowable as a deduction for depreciation under this part.

(2) The term "recovery period," relating to property under Section 168 of the Internal Revenue Code, means the class life asset depreciation range allowable under this part.

(3) The provisions of Section 280F of the Internal Revenue Code which relate to the investment tax credit shall not be applicable for purposes of this part.

(c) Paragraphs (1) and (2) of subdivision (b) shall not apply to Section 24356.2 property.

SEC. 100. Section 24353.1 of the Revenue and Taxation Code is repealed.

SEC. 101. Section 24356.1. of the Revenue and Taxation Code is repealed.

SEC. 102. Section 24357.10 is added to the Revenue and Taxation Code, to read:

24357.10. (a) For purposes of Section 24357, 80 percent of any amount described in subdivision (b) shall be treated as a charitable contribution.

(b) For purposes of subdivision (a), an amount is described in this subdivision if each of the following applies:

(1) The amount is paid by the taxpayer to or for the benefit of an educational organization which is:

(A) Described in Section 170 (b) (1) (A) (ii) of the Internal Revenue Code.

(B) An institution of higher education as defined in Section 3304(f) of the Internal Revenue Code.

(2) The amount would be allowable as a deduction under this section but for the fact that the taxpayer receives (directly or indirectly) as a result of paying the amount the right to purchase tickets for seating at an athletic event in an athletic stadium of the institution.

(c) If any portion of a payment is for the purchase of the tickets, the portion and the remaining portion (if any) of the payment shall be treated as separate amounts for purposes of this section.

SEC. 103. Section 24359 of the Revenue and Taxation Code is amended to read:

24359. For purposes of Sections 24357 to 24359, inclusive, the term "charitable contribution" means a contribution or gift to or for the use of—

(a) A state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for

exclusively public purposes.

(b) A corporation, trust, or community chest, fund, or foundation—

(1) Created or organized in the United States or in any possession thereof, or under the law of the United States, any state, the District of Columbia, or any possession of the United States;

(2) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(3) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(4) Which is not disqualified for tax exemption under Section 23701d by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a bank or corporation to a trust, chest, fund, or foundation shall be deductible by reason of this section only if it is to be used within the United States or any of its possessions exclusively for purposes specified in paragraph (2). Rules similar to the rules of subdivision (b) of Section 23701d shall apply for purposes of this section.

(c) A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization—

(1) Organized in the United States or any of its possessions, and

(2) No part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual.

SEC. 104. Section 24361 of the Revenue and Taxation Code is amended to read:

24361. (a) For purposes of subsection (b), the amount of bond premium, in the case of the holder of any bond, shall be determined—

(1) With reference to the amount of the basis (for determining loss on sale or exchange) of such bond;

(2) With reference to the amount payable on maturity or on earlier call date; and

(3) With adjustments proper to reflect unamortized bond premium, with respect to the bond, for the period before the date as of which Section 24360 becomes applicable with respect to the taxpayer with respect to such bond.

In no case shall the amount of bond premium on a convertible bond include any amount attributable to the conversion features of the bond.

(b) The amortizable bond premium of the income year shall be the amount of the bond premium attributable to such year. In the case of a bond described in Section 24362(a) issued after January 22, 1951, and acquired after January 22, 1954, which has a call date not more than three years after the date of such issue, the amount of bond premium attributable to the income year in which the bond is called shall include an amount equal to the excess of the amount of the adjusted basis (for determining loss on sale or exchange) of such bond as of the beginning of the income year over the amount received on redemption of the bond or (if greater) the amount payable on maturity.

(c) (1) Except as provided in regulations, the determinations required under subdivisions (a) and (b) shall be made on the basis of the taxpayer's yield to maturity determined by—

(A) Using the taxpayer's basis for purposes of determining loss on sale or exchange of the obligation, and

(B) Compounding at the close of each accrual period (as defined in Section 1272(a)(5) of the Internal Revenue Code).

(2) For purposes of paragraph (1), if the amount payable on an earlier call date is used under subparagraph (B) of paragraph (1) in determining the amortizable bond premium attributable to the period before the earlier call date, that bond shall be treated as maturing on that date for the amount so payable and then reissued on that date for the amount so payable.

SEC. 105. Section 24362 of the Revenue and Taxation Code is amended to read:

24362. (a) Sections 24360 to 24363.5, inclusive, shall apply to the bonds only if the taxpayer has elected to have these sections apply; in the case of any taxpayer, bonds the interest on which is not excludable from gross income.

(b) The election authorized under this section shall be made in accordance with such regulations as the Franchise Tax Board shall prescribe. If such election is made with respect to any bond (described in subsection (a)) of the taxpayer, it shall also apply to all such bonds held by the taxpayer at the beginning of the first income year to which the election applies and to all such bonds thereafter acquired by him and shall be binding for all subsequent income years with respect to all such bonds of the taxpayer, unless, on application by the taxpayer, the Franchise Tax Board permits him, subject to such conditions as the Franchise Tax Board deems necessary, to revoke such election.

SEC. 106. Section 24363 of the Revenue and Taxation Code is amended to read:

24363. For purposes of Sections 24360 to 24363.5, inclusive, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, but does not include any such

obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the income year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

SEC. 107. Section 24363.5 is added to the Revenue and Taxation Code, to read:

24363.5. (a) Except as provided in regulations, in the case of any taxable bond each of the following shall apply:

(1) The amount of any bond premium shall be allocated among the interest payments on the bond under rules similar to the rules of subdivision (c) of Section 24361.

(2) In lieu of any deduction under Section 24360, the amount of any premium so allocated to any interest payment shall be applied against (and operate to reduce) the amount of the interest payment.

(b) For purposes of this section, the term "taxable bond" means any bond the interest of which is not excludable from gross income.

SEC. 108. Section 24368.1 of the Revenue and Taxation Code is repealed.

SEC. 109. Section 24368.1 is added to the Revenue and Taxation Code, to read:

24368.1. (a) No depreciation deduction shall be allowable under Section 24349 (and no depreciation or amortization deduction shall be allowable under any other provision of this part) with respect to any trademark or trade name expenditures.

(b) For purposes of this section, the term "trademark or trade name expenditure" means any expenditure which is directly connected with the acquisition, protection, expansion, registration (federal, state, or foreign), or defense of a trademark or trade name.

SEC. 110. Section 24373 of the Revenue and Taxation Code is repealed.

SEC. 111. Section 24373 is added to the Revenue and Taxation Code, to read:

24373. Section 178 of the Internal Revenue Code, relating to the amortization of cost of acquiring a lease, shall apply.

SEC. 112. Section 24374 of the Revenue and Taxation Code is repealed.

SEC. 113. Section 24375 of the Revenue and Taxation Code is repealed.

SEC. 114. Section 24376 of the Revenue and Taxation Code is repealed.

SEC. 115. Section 24380 of the Revenue and Taxation Code is repealed.

SEC. 116. Section 24381 of the Revenue and Taxation Code is repealed.

SEC. 117. Section 24382 of the Revenue and Taxation Code is amended to read:

24382. (a) A deduction shall be allowed for certain expenses of tenant stockholders in a cooperative housing corporation and the

amounts allowed shall be determined in accordance with the provisions of Section 216 of the Internal Revenue Code.

(b) The provisions of Section 6282(b) of Public Law 100-647, relating to the effective date for distributions by cooperative housing corporations, shall apply.

SEC. 118. Section 24412 of the Revenue and Taxation Code is amended to read:

24412. Sections 851 to 855, inclusive, and 860 of the Internal Revenue Code, relating to regulated investment companies, shall be applicable for purposes of this part, except that—

(a) (1) Section 852(b) (1) of the Internal Revenue Code, relating to imposition of tax on regulated investment companies, shall not apply.

(2) Every regulated investment company shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its "net income" as defined in Section 24341 shall be equal to its "investment company income," as defined in subdivision (b).

(b) "Investment company income" means investment company taxable income, as defined in Section 852(b) (2) of the Internal Revenue Code, modified as follows:

(1) Section 852(b) (2) (A) of the Internal Revenue Code, relating to an exclusion for net capital gain, shall not apply.

(2) Section 852(b) (2) (B) of the Internal Revenue Code, relating to net operating losses, shall be modified to deny the deduction allowed under Sections 24416 and 24416.1, in lieu of denying the deduction allowed by Section 172 of the Internal Revenue Code.

(3) In lieu of the provision of Section 852(b) (2) (C) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(4) The deduction for dividends paid, under Section 852(b) (2) (D) of the Internal Revenue Code, is modified to allow capital gain dividends and exempt interest dividends (to the extent such interest is included in gross income under this part) to be included in the computation of the deduction.

(c) Section 852(b) (3) (A) of the Internal Revenue Code, relating to capital gains, shall not apply.

(d) Section 852(b) (5) (B) of the Internal Revenue Code, relating to treatment of exempt interest dividends by shareholders, shall not apply.

(e) The provisions of Section 854 of the Internal Revenue Code, relating to limitations applicable to dividends received from regulated investment company, are modified to refer to Section 24402, in lieu of Section 243 of the Internal Revenue Code.

SEC. 119. Section 24413 of the Revenue and Taxation Code is amended to read:

24413. Sections 856 to 860, inclusive, of the Internal Revenue Code, relating to real estate investment trusts, shall be applicable for purposes of this part, except that:

(a) (1) Section 857(b) (1) of the Internal Revenue Code, relating to imposition of tax on real estate investment trusts, shall not apply.

(2) Every real estate investment trust shall be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except that its "net income" (as defined in Section 24341) shall be equal to its "real estate investment trust income," as defined in subdivision (b).

(b) "Real estate investment trust income" means real estate investment company taxable income, as defined in Section 857(b) (2) of the Internal Revenue Code, modified as follows:

(1) In lieu of the provisions of Section 857(b) (2) (A) of the Internal Revenue Code, relating to special deductions for corporations, no deduction shall be allowed under Section 24402.

(2) Section 857(b) (2) (D) of the Internal Revenue Code, relating to an exclusion for an amount equal to the net income from foreclosure property, shall not apply.

(3) Section 857(b) (2) (E) of the Internal Revenue Code, relating to a deduction for an amount equal to the tax imposed in the case of failure to meet certain requirements for the taxable year, shall not apply.

(4) Section 857(b) (2) (F) of the Internal Revenue Code, relating to an exclusion for an amount equal to any net income derived from prohibited transactions, shall not apply.

(c) Section 857(b) (3) of the Internal Revenue Code, relating to an alternative tax in case of capital gains, shall not apply.

(d) Section 857(b) (4) (A) of the Internal Revenue Code, relating to the imposition of tax on income from foreclosure property, shall not apply.

(e) Section 857(b) (5) of the Internal Revenue Code, relating to the imposition of tax in case of failure to meet certain requirements, shall not apply.

(f) Section 857(b) (6) (A) of the Internal Revenue Code, relating to the imposition of tax on income from prohibited transactions, shall not apply.

SEC. 119.5. Section 24422.3 of the Revenue and Taxation Code is amended to read:

24422.3. (a) Capitalization and inclusion in inventory costs of certain expenses shall be determined in accordance with Section 263A of the Internal Revenue Code.

(b) The provisions of Section 10204 of Public Law 100-203, relating to amortization of past service pension costs, shall not apply.

SEC. 120. Section 24440 of the Revenue and Taxation Code is amended to read:

24440. (a) The provisions of Section 280C (b) of the Internal Revenue Code (relating to credit for qualified clinical testing expenses for certain drugs) shall be applicable.

(b) The provisions of Section 280C(c) of the Internal Revenue Code (relating to credit for increasing research activities) shall be applicable.

SEC. 121. Section 24442.5 is added to the Revenue and Taxation Code, to read:

24442.5. The provisions of Section 280H of the Internal Revenue Code, relating to limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years, shall apply to income years beginning on or after January 1, 1989.

SEC. 122. Section 24443 of the Revenue and Taxation Code is amended to read:

24443. (a) The provisions of Section 274 of the Internal Revenue Code, relating to the disallowance of certain entertainment, gift, travel, etc., expenses, shall apply, except as otherwise provided.

(b) For income years beginning in 1987 or 1988, Section 274(n) of the Internal Revenue Code shall not apply to any expense if the expense is for food or beverage—

(1) Required by federal law to be provided to crew members of a vessel at sea, or

(2) Provided on an oil or gas platform or drilling rig located offshore in Alaska.

(c) For income years beginning on or after January 1, 1989, the amendments made to Section 274 of the Internal Revenue Code by Section 6003 of Public Law 100-647, relating to only 80 percent of meal and entertainment expenses allowed as a deduction, shall apply.

SEC. 123. Section 24451 of the Revenue and Taxation Code is amended to read:

24451. (a) The provisions of Section 301 of the Internal Revenue Code, relating to distributions of property, shall apply, except as otherwise provided.

(b) The provisions of Section 301(e)(2) are modified to refer to Section 24402 in lieu of Sections 243, 244, or 245 of the Internal Revenue Code.

(c) The provisions of Section 10222(b)(2) of Public Law 100-203, relating to the effective dates for distribution received by 20-percent corporate shareholders, as modified by Section 2004(j)(4) of Public Law 100-647, shall apply.

SEC. 124. Section 24452 of the Revenue and Taxation Code is repealed.

SEC. 125. Section 24453 of the Revenue and Taxation Code is repealed.

SEC. 126. Section 24454 of the Revenue and Taxation Code is repealed.

SEC. 127. Section 24454.2 of the Revenue and Taxation Code is repealed.

SEC. 128. Section 24457 of the Revenue and Taxation Code is amended to read:

24457. (a) Section 304 of the Internal Revenue Code, relating to redemption through the use of related corporations, shall be applicable, except as otherwise provided.

(b) For purposes of applying the provisions of Section 304(b) (4) of the Internal Revenue Code, the term "affiliated group" means a controlled group within the meaning of Section 24564.

(c) The amendments to Section 304 of the Internal Revenue Code made by Section 10223 of Public Law 100-203, relating to redemption through use of related corporations, shall not apply.

SEC. 129. Section 24513 of the Revenue and Taxation Code is amended to read:

24513. (a) For purposes of this part, the provisions of Section 633 of Public Law 99-514 shall apply, except as otherwise provided.

(b) The provisions of Section 633(e) of Public Law 99-514, relating to other transition rules, shall not apply.

(c) The amendments to Section 633 of Public Law 99-514 made by Section 1006(g) (1) to 1006(g) (8), inclusive, of Public Law 100-647, relating to the effective dates for recognition of gain and loss on distributions of property in liquidation, are declaratory of existing law and shall be applied in the same manner as specified in Public Law 100-647.

SEC. 130. Section 24521 of the Revenue and Taxation Code is amended to read:

24521. (a) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in the corporation and immediately after the exchange the person or persons are in control (as defined in Section 24564) of the corporation.

(b) If subdivision (a) would apply to an exchange but for the fact that there is received, in addition to the stock or securities permitted to be received under subdivision (a), other property or money, then:

(1) Gain (if any) to the recipient shall be recognized, but not in excess of the total of both of the following:

(A) The amount of money received.

(B) The fair market value of the other property received.

(2) No loss to the recipient shall be recognized.

(c) In determining control, for purposes of this section, the fact that any corporate transferor distributes part or all of the stock which it receives in the exchange to its shareholders shall not be taken into account.

(d) For purposes of this section, stock or securities issued for any of the following shall not be considered as issued in return for property:

(1) Services.

(2) Indebtedness of the transferee corporation which is not evidenced by a security.

(3) Interest on indebtedness of the transferee corporation which accrued on or after the beginning of the transferor's holding period for the debt.

(e) With respect to transfers on or after June 21, 1988, if—

(1) Property is transferred to a corporation (hereinafter in this subdivision referred to as the "controlled corporation") in an

exchange with respect to which gain or loss is not recognized (in whole or in part) to the transferor under this section, and

(2) The exchange is not in pursuance of a plan of reorganization, Section 24481 shall apply to any transfer in the exchange by the controlled corporation in the same manner as if the transfer were a distribution to which Article 1 (commencing with Section 24451) of Chapter 8 applies.

(f) This section does not apply to a transfer of property of a debtor pursuant to a plan while the debtor is under the jurisdiction of a court in a Title 11 or similar case (within the meaning of paragraph (1) of subdivision (d) of Section 24562), to the extent that the stock or securities received in the exchange are used to satisfy the indebtedness of the debtor.

SEC. 131. Section 24541 of the Revenue and Taxation Code is amended to read:

24541. (a) In the case of an exchange to which Section 24521, 24531, 24532, 24533, 24535, 24551, or 24572 applies—

(1) The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged—

(A) Decreased by—

(i) The fair market value of any other property (except money) received by the bank or corporation;

(ii) The amount of any money received by the bank or corporation; and

(iii) The amount of loss to the bank or corporation which was recognized on such exchange, and

(B) Increased by—

(i) The amount which was treated as a dividend; and

(ii) The amount of gain to the bank or corporation which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) The basis of any other property (except money) received by the bank or corporation shall be its fair market value.

(b) (1) Under regulations prescribed by the Franchise Tax Board, the basis determined under subsection (a) (1) shall be allocated among the properties permitted to be received without the recognition of gain or loss.

(2) In the case of an exchange to which Sections 24532 and 24533 (or so much of Section 24535 as relates to Section 24533) apply, then in making the allocation under paragraph (1) of this subdivision, there shall be taken into account not only the property so permitted to be received without the recognition of gain or loss, but also the stock or securities (if any) of the distributing bank or corporation which are retained, and the allocation of basis shall be made among all such properties.

(c) For purposes of this section, a distribution to which Section 24533 (or so much of Section 24535 as relates to Sections 24532 and 24533) applies shall be treated as an exchange, and for such purposes

the stock and securities of the distributing bank or corporation which are retained shall be treated as surrendered, and received back, in the exchange.

(d) (1) Where, as part of the consideration to the bank or corporation, another party to the exchange assumed a liability of the bank or corporation or acquired from the bank or corporation property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of this section, be treated as money received by the bank or corporation on the exchange.

(2) Paragraph (1) shall not apply to the amount of any liability excluded under paragraph (3) of subdivision (c) of Section 24540.

(e) This section shall not apply to property acquired by a bank or corporation by the exchange of its stock or securities (or the stock or securities of a corporation which is in control of the acquiring corporation) as consideration in whole or in part for the transfer of the property to it.

(f) For purposes of this section, the property permitted to be received under Section 24551 without the recognition of gain or loss shall be treated as consisting only of stock or securities in another corporation which is a party to the reorganization.

SEC. 132. Section 24562 of the Revenue and Taxation Code is amended to read:

24562. (a) For purposes of Chapter 8 (commencing with Section 24451), Chapter 9 (commencing with Section 24501), and this chapter, "reorganization" means any of the following:

(1) A statutory merger or consolidation.

(2) The acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of that other corporation (whether or not the acquiring corporation had control immediately before the acquisition).

(3) The acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded.

(4) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under Section 24531, 24533, or 24535.

(5) A recapitalization.

(6) A mere change in identity, form, or place of organization of one corporation, however effected.

(7) A transfer by a corporation of all or part of its assets to another corporation in a Title 11 or similar case; but only if, in pursuance of the plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under Section 24531, 24533, or 24535.

(b) (1) If a transaction is described in both paragraph (3) and paragraph (4) of subdivision (a), then, for purposes of this chapter, the transaction shall be treated as described only in paragraph (4) of subdivision (a).

(2) If:

(A) One corporation acquires substantially all of the properties of another corporation;

(B) The acquisition would qualify under paragraph (3) of subdivision (a) but for the fact that the acquiring corporation exchanges money or other property in addition to voting stock; and

(C) The acquiring corporation acquires, solely for voting stock described in paragraph (3) of subdivision (a), property of the other corporation having a fair market value which is at least 80 percent of the fair market value of all of the property of the other corporation;

then the acquisition shall (subject to paragraph (1) of this subdivision) be treated as qualifying under paragraph (3) of subdivision (a). Solely for the purpose of determining whether subparagraph (C) of the preceding sentence applies, the amount of any liability assumed by the acquiring corporation, and the amount of any liability to which any property acquired by the acquiring corporation is subject, shall be treated as money paid for the property.

(3) A transaction otherwise qualifying under paragraph (1), (2), or (3) of subdivision (a) shall not be disqualified by reason of the fact that part or all of the assets or stock which were acquired in the transaction are transferred to a corporation controlled by the corporation acquiring the assets or stock. A similar rule shall apply to a transaction otherwise qualifying under paragraph (7) of subdivision (a) where the requirements of subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 24531 are met with respect to the acquisition of the assets.

(4) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this paragraph as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under paragraph (1) or paragraph (7) of subdivision (a), if both of the following apply:

(A) No stock of the acquiring corporation is used in the

transaction.

(B) In the case of a transaction under paragraph (1) of subdivision (a), the transaction would have qualified under paragraph (1) of subdivision (a) had the merger been into the controlling corporation.

(5) A transaction otherwise qualifying under paragraph (1) of subdivision (a) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this paragraph as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if both of the following apply:

(A) After the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction).

(B) In the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(6) (A) If immediately before a transaction described in subdivision (a) (other than paragraph (5) thereof), two or more parties to the transaction were investment companies, then the transaction shall not be considered to be a reorganization with respect to any such investment company (and its shareholders and security holders) unless it was a regulated investment company, a real estate investment trust, or a corporation which meets the requirements of subparagraph (B).

(B) A corporation meets the requirements of this subparagraph if not more than 25 percent of the value of its total assets is invested in the stock and securities of any one issuer, and not more than 50 percent of the value of its total assets is invested in the stock and securities of five or fewer issuers. For purposes of this subparagraph, all members of a controlled group of corporations (within the meaning of Section 1563(a) of the Internal Revenue Code) shall be treated as one issuer. For purposes of this subparagraph, a person holding stock in a regulated investment company, a real estate investment trust, or an investment company which meets the requirements of this subparagraph shall, except as provided in regulations, be treated as holding its proportionate share of the assets held by that company or trust.

(C) For purposes of this paragraph, "investment company" means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and a corporation shall be

considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

(D) For purposes of this paragraph, in determining total assets there shall be excluded cash and cash items (including receivables), government securities, and, under regulations prescribed by the Franchise Tax Board, assets acquired (through incurring indebtedness or otherwise) for purposes of meeting the requirements of subparagraph (B) or ceasing to be an investment company.

(E) This paragraph does not apply if the stock of each investment company is owned substantially by the same persons in the same proportions.

(F) If an investment company which does not meet the requirements of subparagraph (B) acquires assets of another corporation, subparagraph (A) shall be applied to that investment company and its shareholders and security holders as though its assets had been acquired by that other corporation. If the investment company acquires stock of another corporation in a reorganization described in paragraph (2) of subdivision (a) of Section 24562 (hereafter referred to as the "actual acquisition") subparagraph (A) shall be applied to the shareholders of that investment company as though they had exchanged with the other corporation all of their stock in the investment company for stock having a fair market value equal to the fair market value of their stock of the investment company immediately after the exchange.

(G) For purposes of subparagraphs (B) and (C), "securities" includes obligations of state and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940, 15 U.S.C. 80a-2(36).

(7) (A) A transaction shall fail to meet the requirements of paragraph (3) of subdivision (a), unless the acquired corporation distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the plan of reorganization. For purposes of the preceding sentence, if the acquired corporation is liquidated pursuant to the plan of reorganization, any distribution to its creditors in connection with that liquidation shall be treated as pursuant to the plan of reorganization.

(B) The Franchise Tax Board may waive the application of subparagraph (A) to any transaction subject to any conditions the Franchise Tax Board may prescribe.

(8) In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 24531 are met, for purposes of determining whether the transaction qualifies under paragraph (4) of subdivision

(a), the term "control" has the meaning given to that term by Section 304(c) of the Internal Revenue Code.

(c) The amendments made to this section by the 1971 First Extraordinary Session of the Legislature shall apply to statutory mergers occurring after December 31, 1970.

(d) (1) For purposes of this chapter, "Title 11 or similar case" means—

(A) A case under Title 11 of the United States Code, to the extent this chapter is not in conflict with Section 346(q) (17) (C) of Title 11, or

(B) A receivership, foreclosure, or similar proceeding in a federal or state court.

(2) In applying paragraph (7) of subdivision (a), a transfer of the assets of a corporation shall be treated as made in a Title 11 or similar case only if both of the following apply:

(A) Any party to the reorganization is under the jurisdiction of the court in that case.

(B) The transfer is pursuant to a plan of reorganization approved by the court.

(3) If a transaction (but for this paragraph) qualifies both—

(A) Under paragraph (7) of subdivision (a), and

(B) Under any other paragraph of subdivision (a) or under Section 24502 or 24521, then, for purposes of this chapter (other than Section 24540(c) (1)), the transaction shall be treated as qualifying only under paragraph (7) of subdivision (a).

(4) For purposes of paragraphs (1) and (2), in the case of a receivership, foreclosure, or similar proceeding before a federal or state agency involving a financial institution to which Section 585 or 593 of the Internal Revenue Code applies, the agency shall be treated as a court.

(5) In the case of a Title 11 or similar case, the requirement of subparagraph (B) of paragraph (5) of subdivision (b) shall be treated as met if both of the following apply:

(A) No former shareholder of the surviving corporation received any consideration for his or her stock.

(B) The former creditors of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, debt of the surviving corporation which had a fair market value equal to 80 percent or more of the total fair market value of the debt of the surviving corporation.

(6) (A) For purposes of paragraphs (1) and (2), in the case of a financial institution to which Section 593 of the Internal Revenue Code applies, the term "Title 11 or similar case" means only a case in which the board (which will be treated as the court in such case) makes the certification described in subparagraph (B).

(B) A transaction otherwise meeting the requirements of paragraph (7) of subdivision (a), in which the transferor corporation is a financial institution to which Section 593 of the Internal Revenue Code applies, will not be disqualified as a reorganization if no stock

or securities of the corporation to which the assets are transferred are received or distributed, but only if all of the following conditions are met:

(i) The requirements of subparagraphs (A) and (B) of paragraph (1) of subdivision (b) of Section 24531 are met with respect to the acquisition of the assets,

(ii) Substantially all of the liabilities of the transferor immediately before the transfer become, as a result of the transfer, liabilities of the transferee, and

(iii) The board certifies that the grounds set forth in Section 1464(d)(6)(a)(i), (ii), or (iii) of Title 12, United States Code, exist with respect to the transferor or will exist in the near future in the absence of action by the board.

(C) For purposes of this subdivision, "board" means the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation or, if neither has supervisory authority with respect to the transferor, the equivalent state authority.

(D) This paragraph shall not apply to acquisitions after December 31, 1988, nor to income years beginning after December 31, 1988.

SEC. 133. Chapter 11.7 (commencing with Section 24585) of Part 11 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 134. Section 24592 of the Revenue and Taxation Code is amended to read:

24592. (a) Section 382 of the Internal Revenue Code, relating to special limitation on net operating loss carry forwards and certain built-in losses following ownership change, shall be applicable, except as otherwise provided.

(b) The provisions of Section 621(f) of Public Law 99-514, relating to the effective dates for limitations on net operating loss carryforwards, as amended by Section 1006(d) of Public Law 100-647, shall apply.

(c) For income years beginning on or after January 1, 1987, the provisions of Section 10225 of Public Law 100-203, relating to amendments to Section 382, shall be applicable.

(d) The amendments to Section 382 of the Internal Revenue Code made by Section 4012 of Public Law 100-647, relating to the extension and modification of provisions relating to financial institutions, shall not apply.

(e) The provisions of Section 6277 of Public Law 100-647, relating to the application of net operating loss limitations to bankruptcy reorganizations, shall apply.

SEC. 135. Section 24601 of the Revenue and Taxation Code is amended to read:

24601. (a) The provisions of Sections 404, 404A, 406, 407, 419, and 419A of the Internal Revenue Code shall apply, except as otherwise provided.

(b) the provisions of Section 10201 of Public Law 100–203, relating to accrual of vacation pay, shall not apply.

SEC. 136. Section 24632 is added to the Revenue and Taxation

Code, to read:

24632. (a) The income year of a taxpayer may not be different than the taxable year used for purposes of the Internal Revenue Code, unless initiated or approved by the Franchise Tax Board.

(b) (1) For purposes of this section, whenever a taxpayer is required to make a federal return for a period of less than 12 months, such period shall be deemed to be a taxable year and the provisions of Section 24634 shall apply.

(2) Where a short period return is required by paragraph (1), the due date of that return shall be the same as the date that the short period return is required to be filed for federal purposes.

SEC. 137. Section 24633.5 of the Revenue and Taxation Code is amended to read:

24633.5. (a) In the case of any "S corporation" or personal service corporation required to change its accounting period by the federal Tax Reform Act of 1986 (Public Law 99-514) as modified by Section 10206 of Public Law 100-203 and Section 1008(e) of Public Law 100-647, that change shall be treated as initiated by the "S corporation" or personal service corporation with the consent of the Franchise Tax Board.

(b) With respect to any beneficiary, partner, or shareholder which is required to include the items from more than one taxable (or income) year of the trust, partnership, or corporation in any one income year, any income in excess of expenses for the short income year resulting from the change described in subdivision (a) or subdivision (a) of Section 17551.5 shall be taken into account ratably in each of the first four income years beginning after December 31, 1986, unless the beneficiary, partner, or shareholder elects to include all that income in the beneficiary's, partner's, or shareholder's income year with or within which the trust's, partnership's, or corporation's short taxable (or income) year ends.

(c) The spreading of income over four years, as allowed by subdivision (b), shall not apply unless the taxpayer receives similar treatment for federal income tax purposes.

(d) For income years beginning on or after January 1, 1987, each of the following shall apply:

(1) The adjusted basis of any partner's interest in a partnership or shareholder's stock in an "S corporation" shall be determined as if all of the income to be taken into account ratably in the four income years referred to in subdivision (b) were included in gross income for the first of those income years.

(2) If any interest in a partnership or stock in an "S corporation" is disposed of before the last income year in the spread period, all amounts which would be included in the gross income of the partner or shareholder for subsequent income years in the spread period under subdivision (b) and attributable to the interest or stock disposed of shall be included in gross income for the income year in which the disposition occurs. For purposes of the preceding sentence, the term "spread period" means the period consisting of

the four income years referred to in subdivision (b).

SEC. 137.5. Section 24637 of the Revenue and Taxation Code is amended to read:

24637. For income years beginning on or after January 1, 1987, Section 444 of the Internal Revenue Code, as added by Public Law 200-103, relating to election of taxable year other than required taxable year, shall be applicable, except that Section 444(c) (1), relating to effect of election, shall not apply.

SEC. 138. Section 24652 of the Revenue and Taxation Code is amended to read:

24652. (a) The method of accounting for corporations engaged in farming shall be determined in accordance with Section 447 of the Internal Revenue Code.

(b) The provisions of Section 10205 of Public Law 100-203, relating to certain farm corporations required to use the accrual method of accounting, shall not apply.

SEC. 139. Section 24654 of the Revenue and Taxation Code is amended to read:

24654. (a) The use of the cash method of accounting shall be limited in accordance with Section 448 of the Internal Revenue Code.

(b) For purposes of applying the provisions of Section 448 of the Internal Revenue Code, Sections 801(d) (2), 801(d) (3), and 801(d) (5) of the Tax Reform Act of 1986 (Public Law 99-514), as modified by Section 1008(a) of Public Law 100-647, shall apply to income years beginning on or after January 1, 1987.

SEC. 140. Section 24661 of the Revenue and Taxation Code is amended to read:

24661. (a) The provisions of Section 451 of the Internal Revenue Code, relating to the general rule for taxable year of inclusion, shall be applicable, except as otherwise provided.

(b) The amendments to Section 451 of the Internal Revenue Code made by Section 6030 of Public Law 100-647 shall be applied in the same manner as specified by Section 6030(b) of that act.

(c) The amendments to Section 451 of the Internal Revenue Code made by Section 6033 of Public Law 100-647 shall be applied in the same manner as specified by Section 6033(b) of that act.

SEC. 141. Section 24667 of the Revenue and Taxation Code is amended to read:

24667. (a) (1) Installment sales shall be treated in accordance with Sections 453, 453A, 453B, and 453C of the Internal Revenue Code, except as otherwise provided.

(2) For purposes of applying the provisions of Section 453C of the Internal Revenue Code, relating to certain indebtedness treated as payment on installment obligations, the provisions of Sections 811(c) (2), 811(c) (4), 811(c) (6), and 811(c) (7) of Public Law 99-514, as modified by Section 1008(f) of Public Law 100-647, shall apply to income years beginning on or after January 1, 1988.

(3) The provisions of Section 812 of Public Law 99-514, relating to

the disallowance of use of the installment method for certain obligations, as modified by Section 1008(g) of Public Law 100-647, shall apply to income years beginning on or after January 1, 1988.

(b) For purposes of subdivision (a), any references in the Internal Revenue Code to sections that have not been incorporated into this part by reference shall be deemed to refer to the corresponding section, if any, of this part.

(c) The amendments to Sections 453, 453A and 453C made by Section 10202 of Public Law 100–203, relating to installment sales, shall not apply.

(d) The amendments to Sections 453, 453A and 453C made by Public Law 100–647, relating to installment sales, shall not apply.

SEC. 142. Section 24673.2 of the Revenue and Taxation Code is amended to read:

24673.2. (a) Long-term contracts shall be accounted for in accordance with the special rules set forth in Section 460 of the Internal Revenue Code.

(b) (1) The provisions of Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall be applicable to income years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during an income year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for the income year in which the contract began.

(c) The amendments to Section 460 of the Internal Revenue Code made by Section 10203 of Public Law 100–203, relating to a reduction in the percentage of items taken into account under the completed contract method, shall not apply.

(d) The amendments to Section 460 of the Internal Revenue Code made by Section 5041 of Public Law 100–647, relating to a reduction in the percentage of items taken into account under the completed contract method, shall not apply.

(e) For purposes of applying Section 460(a) (2) of the Internal Revenue Code, relating to 90 percent look-back method, any adjustment to income computed under subdivision (b) shall be deemed to have been reported in the income year from which the adjustment arose, rather than the income year in which the contract was completed.

SEC. 143. Section 24681 of the Revenue and Taxation Code is amended to read:

24681. (a) The provisions of Section 461 of the Internal Revenue Code, relating to the general rule for taxable year of deduction, shall be applicable, except as otherwise provided.

(b) The amendments to Section 461 of the Internal Revenue Code made by Section 10201 of Public Law 100–203, relating to accrual of

vacation pay, shall not apply.

SEC. 144. Section 24690 of the Revenue and Taxation Code is amended to read:

24690. (a) The provisions of Section 468A of the Internal Revenue Code, relating to special rules for nuclear decommissioning costs, shall be applicable, except as otherwise provided.

(b) The deduction allowed for the 1987 income year may include contributions to a fund that are required to bring the balance in that fund up to the balance it would have contained if allowable contributions had been made for the 1985 and 1986 income years.

(c) The provisions of Section 468A(e)(2) of the Internal Revenue Code, which impose a tax upon the gross income of the Nuclear Decommissioning Reserve Fund, shall be modified for purposes of this part to provide that a tax shall be imposed upon the gross income of that fund for any taxable year at a rate equal to the rate in effect for that taxable year under Section 23501. The income tax imposed upon the gross income of the fund by this section is in lieu of any other tax imposed by this part or Part 10 (commencing with Section 17001) upon or measured by that income.

SEC. 145. Section 24701 of the Revenue and Taxation Code is amended to read:

24701. (a) The provisions of Section 471 of the Internal Revenue Code, relating to the general rule for inventories, shall apply.

(b) The provisions of Section 472 of the Internal Revenue Code, relating to last-in, first-out inventories, shall apply.

SEC. 146. Section 24702 of the Revenue and Taxation Code is repealed.

SEC. 147. Section 24703 of the Revenue and Taxation Code is repealed.

SEC. 148. Section 24704 of the Revenue and Taxation Code is repealed.

SEC. 149. Section 24705 of the Revenue and Taxation Code is repealed.

SEC. 150. Section 24706 of the Revenue and Taxation Code is repealed.

SEC. 151. Section 24707 of the Revenue and Taxation Code is repealed.

SEC. 152. Section 24833 of the Revenue and Taxation Code is amended to read:

24833. The provisions of Section 613 of the Internal Revenue Code, relating to percentage depletion, shall be modified as follows:

(a) In the case of oil, gas, and geothermal wells the allowance for depletion under this part shall be 22 percent of the gross income from the property during the income year, excluding from that gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. That allowance shall not exceed 50 percent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if

computed without reference to this section. For purposes of the preceding sentence, the allowable deductions taken into account with respect to expenses of oil, gas, and geothermal wells in computing the taxable income from the property shall be decreased by an amount equal to so much of any gain which is:

(1) Treated under Section 1245 of the Internal Revenue Code (relating to gain from disposition of certain depreciable property) as gain from the sale or exchange of property which is neither a capital asset nor property described in Section 1231 of the Internal Revenue Code, and

(2) Property allocable to the property.

(b) Where the total accumulated amount of deduction allowed or allowable for depletion exceeds an amount equal to the adjusted cost of the taxpayer's interest in any property which is subject to recovery through depletion under subdivision (a), percentage depletion shall be allowed in respect to those interests in that property, subject to the limitations and adjustments of subdivisions (c) and (d).

(c) Where the total depletion allowance for all properties in subdivision (b) exceeds one million five hundred thousand dollars ($1,500,000), the allowance in subdivision (b) shall be reduced by 125 percent of the excess.

(d) When either (1) the income from sources within this state of two or more corporations which are commonly owned or controlled is determined in accordance with Chapter 17 (commencing with Section 25101) or Part 18 (commencing with Section 38001), or (2) two or more commonly owned or controlled corporations derive income from sources solely within this state, whose business activities are such that if conducted within and without this state, the income derived from sources within this state would be determined in accordance with Chapter 17 (commencing with Section 25101) or Part 18 (commencing with Section 38001) (hereinafter referred to as "wholly intrastate corporations"), then those corporations shall determine the percentage depletion prescribed in subdivision (b) as if those corporations were one corporation. As to "wholly intrastate corporations," if subdivision (c) applies, then the amount of percentage depletion (as adjusted and limited by subdivision (c)) shall be prorated among them in the ratio to which the percentage depletion of each prescribed in subdivision (b) (before the application of subdivision (c)) bears to the total percentage depletion prescribed in subdivision (b) for all corporations (before the application of subdivision (c)).

(e) For purposes of this section, a "geothermal deposit" means a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure).

(f) For purposes of this section, "gross income from the property" shall not include any lease bonus, advance royalty, or other amount payable without regard to production from the property.

SEC. 153. Section 24916 of the Revenue and Taxation Code is

amended to read:

24916. Proper adjustment in respect of the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account, but no such adjustment shall be made for any of the following:

(1) Sales or use tax paid or incurred in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 23612.

(2) Taxes or other carrying charges described in Section 24426, or for expenditures described in Sections 24364 and 24369 for which deductions have been taken in determining net income for the income year or any prior income year.

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion:

(1) In the case of banks or corporations subject to the tax imposed by Chapter 2, to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b) (1) (B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3, to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349, and 24372.

(c) In the case of stock (to the extent not provided for in the foregoing subdivisions) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of banks or corporations subject to the tax imposed by Chapter 2, in the case any bond (as defined in Section 24363) to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3, in the case of any bond (as defined in Section 24363) the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction

pursuant to subdivision (b) of Section 24360, and in the case of any other bond (as defined in Section 24363) to the extent of the deductions allowable pursuant to subdivision (a) of Section 24360 (or the amount applied to reduce interest payments under paragraph (2) of subdivision (a) of Section 24363.5) with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under Section 616(b) of the Internal Revenue Code (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under such section for the income year and prior years.

(f) For amounts allowable as deductions as deferred expenses under Section 617(a) of the Internal Revenue Code (relating to certain exploration expenditures) and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under such section for the income year and prior years.

(g) For amounts allowed as deductions as deferred expenses under subdivision (a) of Section 24366 (relating to research and experimental expenditures) and resulting in a reduction of the bank or corporations' taxes under this part, but not less than the amounts allowable under such section for the income year and prior years.

(h) For amounts allowed as deductions for payments made on account of transfers of franchises, trademarks, or trade names under Section 24378.

(i) For amounts allowed as deductions under Sections 24356.2 and 24356.3.

SEC. 154. Section 24994 of the Revenue and Taxation Code is amended to read:

24994. Section 1272 of the Internal Revenue Code shall be modified as follows:

(a) For income years beginning on or after January 1, 1987, and before the income year in which the debt obligation matures or is sold, exchanged, or otherwise disposed, the amount included in gross income under this part shall be the same as the amount included in gross income on the federal tax return.

(b) The difference between the amount included in gross income on the federal return and the amount included in gross income under this part, with respect to obligations issued after December 31, 1984, for income years beginning before January 1, 1987, shall be included in gross income in the income year in which the debt obligation matures or is sold, exchanged, or otherwise disposed.

(c) A taxpayer may elect, in the form and manner as the Franchise Tax Board may prescribe,

(1) To recognize the difference specified in subdivision (b)

ratably in each of the first four income years beginning on or after January 1, 1987, rather than at the time the debt obligation matures, is sold, exchanged, or otherwise disposed, or

(2) To apply the provisions of Section 1272 of the Internal Revenue Code to obligations issued on or after the first day of the taxpayer's income years beginning on or after January 1, 1987.

SEC. 155. Section 25107 of the Revenue and Taxation Code is amended to read:

25107. (a) For the purposes of allocation and apportionment of income under Sections 25101 and 25121, an international banking facility maintained by a bank within California shall be considered doing business without the state. Intangible personal property and sales reflected on the segregated books and records recognized by the Board of Governors of the Federal Reserve System as attributable to the international banking facility shall be attributed to that international banking facility in determining the property, payroll, and sales factors of the bank.

(b) As used in this section, "bank" means a commercial bank, the principal office of which is located in this state and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25 (a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604 (a).

SEC. 156. Section 25561 of the Revenue and Taxation Code is amended to read:

25561. For purposes of this article, in the case of a corporation other than a financial corporation, the term "estimated tax" means the amount which the corporation estimates as the amount of the tax imposed by this part; but in no event shall the estimated tax of a corporation subject to the tax imposed by Article 2 of Chapter 2 be less than the minimum tax prescribed in Section 23153.

SEC. 157. Section 25901c of the Revenue and Taxation Code is amended to read:

25901c. (a) Except as provided in Section 25903, interest shall be imposed under this article with respect to any assessable penalty as provided in this section.

(b) In the case of a penalty which, when assessed, is due and payable on notice and demand, other than a penalty imposed under Section 25931 (relating to failure to file a return on or before the due date), Section 25934.2 (relating to underpayment of tax), interest shall be imposed from the date of the notice and demand to the date of payment.

(c) In the case of a penalty which is initially assessed as a deficiency, other than a penalty imposed under Section 25931 (relating to failure to file a return on or before the due date), Section 25934.2 (relating to underpayment of tax), or Section 25934.4

(relating to substantial understatement of tax liability), interest shall be imposed from the date of the notice of proposed assessment to the date of payment.

(d) Interest shall be imposed under this article with respect to any penalty imposed by Section 25931 (relating to failure to file a return on or before the due date), Section 25934 (relating to negligence or fraud), Section 25934.2 (relating to underpayment of tax), or Section 25934.4 (relating to substantial understatement of tax liability) for the period which—

(1) Begins on the date on which the return of the tax with respect to which that penalty is imposed is required to be filed (including any extensions), and

(2) Ends on the date of payment of that addition to tax.

SEC. 158. Section 25934 of the Revenue and Taxation Code is amended to read:

25934. (a) (1) If any part of any underpayment (as defined in subdivision (c)) of tax required to be shown on a return is due to negligence (or disregard of rules or regulations), there shall be added to the tax an amount equal to 5 percent of the underpayment.

(2) There shall not be taken into account under this subdivision any portion of an underpayment attributable to fraud with respect to which a penalty is imposed under subdivision (b).

(3) For purposes of this subdivision, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of this part, and the term "disregard" includes any careless, reckless, or intentional disregard.

(b) (1) If any part of any underpayment (as defined in subdivision (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.

(2) If the Franchise Tax Board establishes that any portion of an underpayment is attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer established is not attributable to fraud.

(c) For purposes of this section, "underpayment" means "deficiency" as defined by Section 25662.1 (except that, for this purpose, the tax shown on a return shall be taken into account only if that return was filed on or before the last day prescribed for the filing of that return, determined with regard to any extension of time for that filing).

(d) If any penalty is assessed under subdivision (b) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under Section 25931 (relating to failure to file that return) or Section 25934.2 (relating to failure to pay tax) shall be assessed with respect to the portion of the underpayment which is attributable to fraud.

(e) If:

(1) A taxpayer fails to make the report required under Section

1092(a)(3)(B) of the Internal Revenue Code in the manner prescribed by that section and that failure is not due to reasonable cause, and

(2) That taxpayer has an underpayment of any tax attributable (in whole or in part) to the denial of a deduction of a loss with respect to any position (within the meaning of Section 1092(d)(2) of the Internal Revenue Code),

then that underpayment shall, for purposes of subdivision (a), be treated as an underpayment due to negligence.

(f) The amendments to subdivisions (a) and (b) made by the act that added this subdivision shall apply only to returns the due date for which (determined without regard to extensions) is after December 31, 1988.

SEC. 159. Section 25951 of the Revenue and Taxation Code is amended to read:

25951. Except as provided in Sections 25954 and 25954.2, in the case of any underpayment of tax there shall be added to the tax for the income year an amount determined at the rate established under Section 19269 on the amount of the underpayment for the period of the underpayment.

SEC. 160. Section 25951.5 of the Revenue and Taxation Code is amended to read:

25951.5. (a) No addition to tax shall be made under Section 25951 for any period before March 16, 1988, with respect to any underpayment, to the extent that underpayment was created or increased by any provision in the act adding this section to the code. The Franchise Tax Board shall adopt procedures, forms, and instructions to implement this section in a reasonable manner.

(b) No addition to tax shall be made under Section 25951 for any period before March 16, 1989, with respect to any underpayment to the extent that underpayment was created or increased by any provision of Sections 1001 to 2005, inclusive, of Public Law 100-647 (TAMRA) which was adopted by reference or otherwise incorporated into the provisions of this part.

SEC. 161. Section 25954 of the Revenue and Taxation Code is amended to read:

25954. (a) Notwithstanding the provisions of the preceding sections of this article, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax paid on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser—

(1) (A) The tax shown on the return of the taxpayer for the preceding income year if a return showing a liability for tax was filed by the taxpayer for the preceding year and such preceding year was a year of 12 months. The tax shown on the return, in the case of the tax imposed by Article 3 (commencing with Section 23181) of

Chapter 2, means the amount of tax shown on the return for the income year as prescribed in Section 25553.

(B) In the case of a large corporation, subparagraph (A) shall not apply, except as provided in clauses (i) and (ii).

(i) Subparagraph (A) shall apply for purposes of determining the amount of the first required installment for any income year.

(ii) Any reduction in the first required installment by reason of clause (i) shall be recaptured by increasing the amount of the next required installment by the amount of that reduction.

(C) In the case of a large worldwide corporation, each of the following shall apply:

(i) Subparagraph (A) shall apply, however, except as provided in clause (ii), the amount determined under subparagraph (A) shall not be less than 70 percent of the tax shown on the return for the current income year, or if no return was filed, 70 percent of the tax for that year.

(ii) With respect to the first required installment for any income year, subparagraph (A) shall apply without the limitation specified in clause (i). However, any reduction in the first required installment by reason of this clause shall be recaptured by increasing the amount of the next required installment by the amount of that reduction.

(2) (A) An amount equal to 90 percent of the tax for the income year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the income year, in the case of the installment required to be paid in the fourth month,

(ii) For the first three months or for the first five months of the income year, in the case of the installment required to be paid in the sixth month,

(iii) For the first six months or for the first eight months of the income year in the case of the installment required to be paid in the ninth month, and

(iv) For the first nine months or for the first 11 months of the income year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this paragraph, the taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 the taxable income referred to in subparagraph (A), and

(ii) Dividing the resulting amount by the number of months in the income year referred to in subparagraph (A).

"Taxable income" as used in this section means, in the case of the tax imposed by Chapter 2 (commencing with Section 23101), income includable in the measure of the tax.

(b) (1) For purposes of this section, the term "large corporation" means any corporation or bank if that corporation or bank (or any predecessor corporation) had taxable income (computed without regard to the deductions allowed by Sections 24416 and 24416.1) of one million dollars ($1,000,000) or more for any income year during

the testing period.

(2) For purposes of this subdivision, the term "testing period" means the three income years immediately preceding the income year involved.

(c) (1) For purposes of this section, the term "large worldwide corporation" means any corporation or bank if that corporation or bank (or any predecessor corporation or bank)—(A) had taxable income (computed without regard to the deductions allowed by Sections 24416 and 24416.1) of one million dollars ($1,000,000) or more for any income year during the testing period, and (B) included during the testing period, for purposes of the tax imposed by this part, income and apportionment factors of one or more banks or corporations which derive all of their income from sources outside the United States which are not subject to the income taxes imposed by Subtitle A of the United States Internal Revenue Code.

(2) For purposes of this subdivision, the term "testing period" means the three income years immediately preceding the income year involved.

SEC. 162. Sections 1001 to 2005, inclusive, of the federal Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647) enacted numerous technical corrections to provisions of the Internal Revenue Code, the Tax Reform Act of 1986 (Public Law 99-514), the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509), and the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), some of which are incorporated into Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code by specific reference. Unless specifically provided otherwise, those technical corrections made by Public Law 100-647 to provisions which are incorporated by reference into Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001) are declaratory of existing law and shall be applied in the same manner as specified in Public Law 100-647.

SEC. 163. (a) For purposes of former Sections 17052.5 and 23601 of the Revenue and Taxation Code, a "solar energy system" for which a credit is allowed must be composed of interrelated elements which were designed and intended at the time of installation to perform the individual functions specified in either subparagraph (A) of paragraph (6) of subdivision (h) of former Section 17052.5 or subparagraph (A) of paragraph (6) of subdivision (f) of former Section 23601.

(b) A credit shall not be allowed for any structural components which were not designed and intended at the time of installation to constitute a "solar energy system," as defined in subdivision (a).

(c) The provisions of this section are declaratory of existing law and do not constitute a change in requirements which must be satisfied in order to claim a credit under the provision of former Section 17052.5 or 23601.

SEC. 165. Sections 44, 45, and 55.5 of this act are declaratory of

existing law and shall apply to taxable years beginning on or after January 1, 1987.

SEC. 166. The provisions of Section 72 of this act shall apply only to claims for property tax assistance for the 1989–90 fiscal year and fiscal years thereafter.

SEC. 167. Sections 6.5 and 73.5 of this bill incorporate amendments to Sections 17039 and 23036 of the Revenue and Taxation Code proposed by this bill and SB 227. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Sections 17039 and 23036 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 227, in which case Sections 17039 and 23036 of the Revenue and Taxation Code, as amended by SB 227, shall remain operative only until the operative date of this bill, at which time Sections 6.5 and 73.5 of this bill shall become operative, and Sections 6 and 73 of this bill shall not become operative.

SEC. 168. Sections 12.5 and 80.6 of this bill incorporate amendments to Sections 17052.18 and 23617.5 of the Revenue and Taxation Code proposed by this bill and AB 446. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Sections 17052.18 and 23617.5 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 446, in which case Sections 17052.18 and 23617.5 of the Revenue and Taxation Code, as amended by AB 446, shall remain operative only until the operative date of this bill, at which time Sections 12.5 and 80.6 of this bill shall become operative, and Sections 12 and 80.5 of this bill shall not become operative.

SEC. 169. Sections 13.5 and 81.5 of this bill incorporate amendments to Sections 17053.7 and 23621 of the Revenue and Taxation Code proposed by this bill and SB 71. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Sections 17053.7 and 23621 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 71, in which case Sections 17053.7 and 23621 of the Revenue and Taxation Code, as amended by SB 71, shall remain operative only until the operative date of this bill, at which time Sections 13.5 and 81.5 of this bill shall become operative, and Sections 13 and 81 of this bill shall not become operative.

SEC. 170. Sections 80.1 and 80.2 of this bill incorporate amendments to Section 23612 of the Revenue and Taxation Code proposed by this bill and AB 867. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 23612 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 867, in which case Section 23612 of the Revenue and Taxation Code, as amended and added by AB 867, shall remain operative only until the operative date of this bill, at which time Sections 80.1 and 80.2 of this bill shall become operative, and Section 80 of this bill shall not become operative.

SEC. 171. Section 19.5 of this bill incorporates amendments to Section 17072 of the Revenue and Taxation Code proposed by this bill and SB 1285. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 17072 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 1285, in which case Section 17072 of the Revenue and Taxation Code, as amended by SB 1285, shall remain operative only until the operative date of this bill, at which time Section 19.5 of this bill shall become operative, and Section 19 of this bill shall not become operative.

SEC. 172. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, unless otherwise specifically provided, the provisions of this act shall be applied in the computation of taxes for taxable or income years beginning on or after January 1, 1989.

CHAPTER 1353

An act to amend Sections 1010 and 1011 of the Military and Veterans Code, and to amend and supplement Section 2.00 of the Budget Act of 1989 by amending Item 1970-301-036 thereof, relating to the Veterans' Home of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Section 1010 of the Military and Veterans Code is amended to read:

1010. As used in this chapter:

(a) "Home" means the Veterans' Home of California, Yountville.

(b) "Administrator" means the Administrator of the Veterans' Home of California, Yountville.

(c) "Department" means the Department of Veterans Affairs.

(d) "Director" means the Director of Veterans Affairs.

(e) "Veteran" means a member of the home.

SEC. 2. Section 1011 of the Military and Veterans Code is amended to read:

1011. (a) There is in the department a Veterans' Home of California, Yountville, which is situated at Veterans' Home, Napa County.

(b) (1) The department may establish and construct a second home which shall be situated in the County of Imperial, Los Angeles, Orange, Riverside, San Bernardino, Ventura, or San Diego. The department shall operate the second home concurrently with the

first home.

(2) The department may complete any preapplication process necessary with the United States Veterans' Administration for construction of the second home.

(3) There is hereby created an Advisory Site Selection Committee in the department to advise the director on the site for the second home. The committee shall hold three meetings and give its recommendation after the third meeting. The committee shall be composed of the following persons:

(A) The Commander of the Veterans of Foreign Wars.

(B) The Commander of the Disabled American Veterans.

(C) The Commander of the American Legion.

(D) The Commander of AmVets.

(E) One member appointed by the Speaker of the Assembly.

(F) One member appointed by the Senate Committee on Rules.

(G) One member appointed by the Governor.

SEC. 3. Item 1970-301-036 of Section 2.00 of the Budget Act of 1989 (Chapter 93, Statutes of 1989) is amended to read:

1970-301-036—For capital outlay, Veterans' Home of California, Yountville, Department of Veterans Affairs, payable from the Special Account for Capital Outlay 665,000

Schedule:

(1) 80.20.050—Renovate Hospital Support Services—Design Review, Asbestos Abatement Plans, and Monitoring 114,000

(2) 80.20.070—Remodel Hospital Wards 1, 2, and 3B—Plan Review, Asbestos Abatement Plans 96,000

(3) 80.20.075—Remodel Hospital Wards 2, 3E, and Administration Plan Review, Asbestos Abatement Plans, and Monitoring 214,000

(4) 80.20.100—Correct Code Deficiencies in Section H—Plan Review, Asbestos Abatement Plans 28,000

(5) 80.20.110—Correct Code Deficiencies in Section K—Plan Review, Asbestos Abatement Plans 28,000

(6) 80.20.120—Construction Management Program 150,000

(7) 80.20.130—Departmental Construction Management Branch Staffing; 1.0 P.Y., effective January 1, 1990 35,000

Provisions:

1. Plan review/revision and development of asbes-

tos abatement plans and construction management programs funded in this item shall occur under direction of the Office of Project Development and Management.

SEC. 4. Notwithstanding any other provision of law, all funds appropriated in Item 1970-301-036 of Section 2.00 of the Budget Act of 1989 shall be appropriated to the Veteran's Home of California, Yountville.

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 eliminate confusion by the public between the existing Veterans' Home of California situated in Napa County, and the proposed second veterans' home in southern California, the construction of which is authorized under existing law, and to provide necessary funds for construction management at the first veteran's home, it is necessary that this act take effect immediately.

CHAPTER 1354

An act to amend Sections 25199.7, 25199.8, 25199.9, 25199.10, 25199.11, and 25199.13 of the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 25199.7 of the Health and Safety Code is amended to read:

25199.7. (a) At least 90 days before filing an application for a land use decision for a specified hazardous waste facility project with a local agency, the proponent shall file a notice of intent to make the application with the Office of Permit Assistance in the Office of Planning and Research and with the applicable city or county. The notice of intent shall specify the location to which the notice of intent is applicable and shall contain a complete description of the nature, function, and scope of the project. The Office of Permit Assistance shall immediately notify affected state agencies of the notice of intent. The local agency shall publish a notice in a newspaper of general circulation in the area affected by the proposed project, shall post notices in the location where the proposed project is located, and shall notify, by a direct mailing, the owners of contiguous property, as shown in the latest equalized assessment role. A notice

of intent filed with a local agency shall be accompanied by a fee which shall be set by the local agency in an amount equal to the local agency's cost of processing the notice of intent and carrying out the notification requirements of this subdivision. A notice of intent is not transferable to a location other than the location specified in the notice and shall remain in effect for one year from the date it is filed with a local agency or until it is withdrawn by the proponent, whichever is earlier.

(b) A notice of intent is not effective and a proponent may not file an application for a land use decision for a specified hazardous waste facility project with a local agency unless the proponent has first complied with subdivision (a).

(c) Within 90 days after a notice of intent is filed with the Office of Permit Assistance pursuant to subdivision (a), the office shall convene a public meeting in the affected city or county to inform the public on the nature, function, and scope of the proposed specified hazardous waste facility project and the procedures that are required for approving applications for the project.

(d) The legislative body of the affected local agency shall appoint a seven member local assessment committee to advise it in considering an application for a land use decision for a specified hazardous waste facility project. The members of the local assessment committee may be appointed at any time after the notice of intent is filed with the local agency but shall be appointed not later than 30 days after the application for the land use decision is accepted as complete by the local agency. The local agency shall charge the project proponent a fee to cover the local agency's costs of establishing and convening the local assessment committee. The fee shall accompany the application for a land use decision.

(1) The membership of the committee shall be broadly constituted to reflect the makeup of the community, and shall include three representatives of the community at large, two representatives of environmental or public interest groups, and two representatives of affected businesses and industries. Members of local assessment committees selected pursuant to this subdivision shall have no direct financial interest, as defined in Section 87103 of the Government Code, in the proposed specified hazardous waste facility project.

(2) The local assessment committee shall, as its primary function, advise the appointing legislative body of the affected local agency of the terms and conditions under which the proposed hazardous waste facility project may be acceptable to the community. To carry out this function, the local assessment committee shall do all of the following:

(A) Enter into a dialogue with the proponent for the proposed hazardous waste facility project to reach an understanding with the proponent on both of the following:

(i) The measures that should be taken by the proponent in connection with the operation of the proposed hazardous waste

facility project to protect the public health, safety, and welfare, and the environment of the city or county.

(ii) The special benefits and remuneration the facility proponent will provide the city or county as compensation for the local costs associated with the operation of the facility.

(B) Represent generally, in meetings with the project proponent, the interests of the residents of the city or county and the interests of adjacent communities.

(C) Receive and expend any technical assistance grants made available pursuant to subdivision (g).

(D) Adopt rules and procedures which are necessary to perform its duties.

(E) Advise the legislative body of the city or county of the terms, provisions, and conditions for project approval which have been agreed upon by the committee and the proponent, and of any additional information which the committee deems appropriate. The legislative body of the city or county may use this advice for its independent consideration of the project.

(3) The legislative body of the affected jurisdiction shall provide staff resources to assist the local assessment committee in performing its duties.

(4) A local assessment committee established pursuant to this subdivision shall cease to exist after final administrative action by state and local agencies has been taken on the permit applications for the project for which the committee was convened.

(e) A local agency shall notify the Office of Permit Assistance within 10 days after an application for a land use decision for a specified hazardous waste facility project is accepted as complete by the local agency and, within 60 days after receiving this notice, the Office of Permit Assistance shall convene a meeting of the lead and responsible agencies for the project, the proponent, the local assessment committee, and the interested public, for the purpose of determining the issues which concern the agencies that are required to approve the project and the issues which concern the public. The meeting shall take place in the jurisdiction where the application has been filed.

(f) Following the meeting required by subdivision (e), the proponent and the local assessment committee appointed pursuant to subdivision (d) shall meet and confer on the specified hazardous waste facility project proposal for the purpose of establishing the terms and conditions under which the project will be acceptable to the community.

(g) (1) If the local assessment committee finds that it requires assistance and independent advice to adequately review a proposed hazardous waste facility project, it may request technical assistance grants from the local agency to enable the committee to hire a consultant. The committee may use technical assistance grant funds made available to it to hire a consultant to do either, or both, of the following:

(A) Assist the committee in reviewing and evaluating the application for the project, the environmental documents prepared for the project pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and any other documents, materials, and information that are required by a public agency in connection with the application for a land use decision or a permit.

(B) Advise the local assessment committee in its meetings and discussions with the facility proponent to seek agreement on the terms and conditions under which the project will be acceptable to the community.

(2) The local agency shall require the proponent of the proposed hazardous waste facility project to pay a fee equal to the amount of any technical assistance grant provided the local assessment committee under paragraph (1). The funds received as a result of the imposition of the fee shall be used to make technical assistance grants exclusively for the purposes described in paragraph (1).

(3) The local agency shall deposit any fee imposed pursuant to paragraph (2) in an account created in the city or county treasury, maintain records of all expenditures from the account, and return any unused funds and accrued interest to the project proponent upon completion of the review of the proposed hazardous waste facility project.

(h) If the local assessment committee and the proponent cannot resolve any differences through the meetings, the Office of Permit Assistance may assist in this resolution pursuant to Section 25199.4.

(i) This section applies only to a specified hazardous waste facility project.

SEC. 2. Section 25199.8 of the Health and Safety Code is amended to read:

25199.8. (a) If an action or proceeding has been commenced in any court to attack, review, set aside, void, or annul the acts or decisions of a lead agency for a specified hazardous waste facility project on the grounds of noncompliance with Division 13 (commencing with Section 21000) of the Public Resources Code, the proponent may, notwithstanding the action or proceeding, request the responsible agencies for the specified hazardous waste facility project to continue to process applications for approval of permits for the project received and accepted as complete by each responsible agency. If a responsible agency receives such a request, the time limits specified in subdivisions (a), (b), and (c) of Section 25199.6 shall apply.

(b) Except as provided in subdivision (d), if any action or proceeding is commenced to review the acts or decisions of a lead or responsible agency for a specified hazardous waste facility project, the proponent may petition the court to stay the action or proceeding. The court, in its discretion, may stay the action or proceeding until all public agencies for the project have completed reviewing and approving or disapproving the applications for

permits for the project. The proponent may, at any time prior to completion of these actions by the lead or responsible agencies, file a petition with the court requesting that the action or proceeding be permitted to proceed and, upon receiving such a petition, the court shall discontinue the stay.

(c) Notwithstanding subdivision (b), a court may enjoin a lead or responsible agency from approving a permit or license if the court finds that the approval would result in an imminent or substantial endangerment of the public health or the environment or if there are other compelling reasons that the action or proceeding should not be stayed.

(d) Subdivision (b) does not apply to an action or proceeding which alleges that a lead or responsible agency has not complied with Division 13 (commencing with Section 21000) of the Public Resources Code.

SEC. 3. Section 25199.9 of the Health and Safety Code is amended to read:

25199.9. (a) A proponent may file an appeal of a land use decision made by a local agency for a specified hazardous waste facility project with the Governor or the Governor's designee pursuant to subdivision (b), (c), or (d) and any interested person may file an appeal of a land use decision made by a local agency for a specified hazardous waste facility project pursuant to subdivision (e). The proponent or an interested person shall file the appeal within 30 calendar days after the date the local agency takes final action on the land use decision. If the proposed project would accept or manage both hazardous waste and solid waste, the appeal shall relate only to the local land use decision concerning the hazardous waste portion of the proposed facility. Any decisions of an appeal board involving the proposed facility shall affect only the hazardous waste portion of the local land use decision.

(b) If an application for a land use decision for a specified hazardous waste facility project is disapproved by a local agency, the proponent for the specified hazardous waste facility project may file an appeal of the disapproval with the Governor or the Governor's designee. The Governor or the Governor's designee shall convene an appeal board pursuant to Section 25199.10 to hear the appeal pursuant to this subdivision if the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies.

(c) (1) Notwithstanding subdivision (b), if an application for a land use decision for a specified hazardous waste facility project is disapproved by a local agency before an environmental impact report for the project is prepared and certified, as specified in Section 21151 of the Public Resources Code, or before a negative declaration for the project is adopted pursuant to subdivision (c) of Section 21080 of the Public Resources Code, the proponent may file an appeal of the disapproval with the Governor or the Governor's

designee.

(2) Within 30 days after an appeal is filed pursuant to this subdivision, the Governor or the Governor's designee shall convene an appeal board, pursuant to Section 25199.10. The appeal board shall thereafter be the lead agency for the specified hazardous waste facility project and shall perform the duties specified in, and carry out the actions required by, Division 13 (commencing with Section 21000) of the Public Resources Code. The proponent may apply for those permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies, at any time before or after the appeal board's compliance with actions required by Division 13 (commencing with Section 21000) of the Public Resources Code. The time limits specified in subdivisions (a), (b), and (c) of Section 25199.6 apply to these responsible agencies except that, for the purposes of these time limits, the date when the appeal board has complied with all actions required by Division 13 (commencing with Section 21000) of the Public Resources Code shall be deemed equivalent to the date when a lead agency decides to approve or disapprove a project.

(3) After the proponent has applied for and obtained the permits specified in paragraph (2), the proponent for the specified hazardous waste facility project may request the Governor or the Governor's designee to reconvene the appeal board to hear the appeal. The Governor or the Governor's designee shall reconvene the appeal board pursuant to Section 25199.10 to hear the appeal of a disapproval pursuant to this subdivision if it has been demonstrated to the Governor or the Governor's designee that the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies.

(d) If an application for a land use decision for a specified hazardous waste facility project is approved by a local agency, the proponent for the specified hazardous waste facility project may file an appeal of one or more conditions imposed by the land use decision with the Governor or the Governor's designee. An appeal filed under this subdivision shall specify the particular condition or conditions imposed by the land use decision that are appealed and shall be based solely on the grounds that the condition or conditions imposed on the operation of the facility by the land use decision are so onerous and restrictive that their imposition is the same as a disapproval of the application for a land use decision. The Governor or the Governor's designee shall convene an appeal board pursuant to this subdivision if the proponent has applied for, and obtained, all permits for the specified hazardous waste facility project which can be obtained prior to its construction from those responsible agencies which are state agencies.

(e) If an application for a land use decision for a specified hazardous waste facility project is approved by a local agency, any

interested person may file an appeal of the approval with the Governor or the Governor's designee. An appeal may be filed pursuant to this subdivision only if the appeal is based solely on the grounds that the conditions imposed on the project by the land use decision do not adequately protect the public health, safety, or welfare. The Governor or the Governor's designee shall convene an appeal board pursuant to this subdivision if the proponent for the specified hazardous waste facility project has applied for, and obtained, all permits for the project which can be obtained prior to its construction from those responsible agencies which are state agencies. An interested person filing an appeal pursuant to this subdivision shall state in the appeal why the conditions imposed by the land use decision do not adequately protect the public health, safety, or welfare and shall specify the additional condition or conditions which are necessary to provide that protection.

SEC. 4. Section 25199.10 of the Health and Safety Code is amended to read:

25199.10. (a) If an appeal is filed pursuant to subdivision (b), (d), or (e) of Section 25199.9, or paragraph (3) of subdivision (c) of Section 25199.9, the Governor or the Governor's designee shall determine within five working days whether the proponent has obtained all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies. If, because the application for the appeal is incomplete, the Governor or the Governor's designee is unable to determine, within five working days, whether or not the appeal board should be convened, the Governor or the Governor's designee may return the application for appeal to the proponent or interested party who filed the appeal. The proponent or interested party shall resubmit the completed application for an appeal within 20 calendar days after receiving the returned appeal and if the proponent or interested party fails to do so, the Governor or the Governor's designee shall not reconsider whether to convene an appeal board.

(b) If the Governor or the Governor's designee determines, pursuant to subdivision (a), that the proponent has obtained all permits for the specified hazardous waste facility project which can be obtained before construction from those responsible agencies which are state agencies, or if an appeal is filed pursuant to paragraph (1) of subdivision (c) of Section 25199.9, the Governor or the Governor's designee shall convene an appeal board within 30 days after making that determination or receiving that appeal, by requesting the League of California Cities and the County Supervisors Association of California to each nominate persons for appointment to an appeal board, as specified in paragraphs (6) and (7) of subdivision (c).

(c) An appeal board shall consist of seven members, five of whom shall be the members listed in paragraphs (1) to (5), inclusive, and two of whom shall be separately appointed for each particular

appeal, as provided in paragraphs (6) and (7). An appeal board shall consist of the following members:

(1) The State Director of Health Services.

(2) The Chairperson of the State Air Resources Board.

(3) The Chairperson of the State Water Resources Control Board.

(4) A member of a county board of supervisors appointed by the Senate Committee on Rules who shall be selected from the persons nominated by the County Supervisors Association of California. The appointment shall be for a period of four years, but shall terminate earlier if the appointee does not continue in office as a member of a board of supervisors.

(5) A member of a city council appointed by the Speaker of the Assembly who shall be selected from the persons nominated by the League of California Cities. The appointment shall be for a period of four years, but shall terminate earlier if the appointee does not continue in office as a member of a city council.

(6) A member of a county board of supervisors appointed by the Speaker of the Assembly who shall be selected from the persons nominated by the County Supervisors Association of California. The member shall be from the county in which the specified hazardous waste facility project which is the subject of the appeal is located. However, if the member appointed pursuant to paragraph (4) is from the county in which the specified hazardous waste facility project is located, the member appointed pursuant to this paragraph shall not be from that same county.

(7) A member of a city council appointed by the Senate Committee on Rules who shall be selected from the persons nominated by the League of California Cities. The member shall be from the city in which the specified hazardous waste facility project which is the subject of the appeal is located, or from the city which the Governor or the Governor's designee determines to be the most directly affected by the project if the project is not located in a city. However, if the member appointed under paragraph (5) is from a city in the county in which the specified hazardous waste facility project is located, the member appointed under this paragraph shall be from a city in a different county.

(d) The appeal board shall issue the final decision upon an appeal in writing and the members of the appeal board shall sign the decision.

(e) The State Director of Health Services, the Chairperson of the State Air Resources Board, and the Chairperson of the State Water Resources Control Board may designate an alternate to attend any meetings or hearings of an appeal board in that person's place, except that the alternate may not vote on a final decision on an appeal or sign the written decision in place of the person for whom the person serves as alternate.

(f) The Governor or the Governor's designee shall designate staff to serve the appeal board.

SEC. 5. Section 25199.11 of the Health and Safety Code is

amended to read:

25199.11. (a) An appeal board convened by the Governor or the Governor's designee to hear an appeal pursuant to subdivision (b) or (c) of Section 25199.9 shall follow the procedures and requirements specified in this section.

(b) Within 30 days after the Governor or the Governor's designee determines that an appeal board should be convened pursuant to subdivision (b) of Section 25199.9, or paragraph (3) of subdivision (c) of Section 25199.9, the appeal board shall be convened and a public hearing held in the city or county where the specified hazardous waste facility project is located. At the hearing, the proponent, and the local agency whose land use decision is being appealed, shall present arguments and evidence to the appeal board concerning whether or not the appeal should be accepted.

(c) Within 15 days after the date of the public hearing specified in subdivision (b), the appeal board shall decide whether or not to accept the appeal. The appeal board may accept an appeal only by an affirmative vote of four members of the appeal board. The appeal board shall make its decision based upon the arguments and evidence presented at the hearing. The appeal board's decision shall be in writing, shall be signed by the members who voted in favor of the decision, and shall state the reasons for accepting or rejecting the appeal. The appeal board may accept the appeal if the arguments and evidence presented at the hearing tend to show that, when the local agency's reasons for disapproving the application for a land use decision are weighed against statewide, regional, or county hazardous waste management policies, goals, and objectives, there are compelling reasons to review the disapproval of the application.

(d) If the appeal board accepts the appeal, within 30 days after this acceptance, the appeal board shall conduct an informal workshop on the subject of the appeal in the city or county where the specified hazardous waste facility project is proposed to be located. Within 45 days following acceptance of the appeal, the appeal board shall also hold a public hearing in the community to hear the arguments and evidence for the purpose of making a tentative decision on the appeal. In issuing a decision pursuant to the hearing, the appeal board shall adopt a rebuttable presumption that the land use decision of the local agency disapproving the application is supported by substantial reasons and that, when these reasons are weighed against statewide, regional, or county hazardous waste management policies, goals, and objectives, the reasons for reversing the local agency's action are not compelling. In all matters related to the appeal, including, but not limited to, matters related to the findings required by subdivision (f), the burden of proof shall be with the proponent to rebut this presumption and to establish that there are compelling reasons to reverse the local agency's land use decision.

(e) Within 45 days after the public hearing, the appeal board shall, by an affirmative vote of at least four members, issue a written

decision on the appeal. If the appeal board agrees with the land use decision of the local agency, the appeal board shall state its reasons for this position. If the appeal board agrees with the proponent's appeal, the appeal board shall issue a tentative decision stating that the local agency's land use decision should be reversed.

(f) The appeal board shall not reverse the local agency's land use decision unless the appeal board makes all of the following findings:

(1) That the significant environmental impacts of the specified hazardous waste facility project will be adequately mitigated.

(2) That the specified hazardous waste facility project was consistent with the applicable city or county general plan when the local agency accepted, as complete, the proponent's application for a land use decision. For the purpose of this finding, a project is consistent with the applicable city or county general plan if the appeal board makes one of the following determinations:

(A) The appeal board may determine that a specified hazardous waste facility project that is not a land disposal facility project is consistent with the general plan if the appeal board makes all of the following findings:

(i) The project is proposed to be located in an area zoned and designated in the applicable general plan for industrial use and substantially developed with other industrial facilities which produce, treat, or dispose of hazardous waste onsite and which are served by the same transportation routes as the proposed facility. In addition, the land uses authorized in the applicable general plan and zoning ordinances in the vicinity of the project are compatible with the project.

(ii) There is no clear and express provision in the general plan which states that such a specified hazardous waste facility project is inconsistent with the general plan, or, if there is such a provision, the provision was adopted after January 1, 1983.

(iii) The specified hazardous waste project is consistent, as determined by the appeal board, with the general plan.

(B) The appeal board may determine that a specified hazardous waste facility project is consistent with the applicable city or county general plan if the project is a land disposal facility project, and if all of the following apply:

(i) There is no clear and express provision in the general plan that states that such a specified hazardous waste facility project is inconsistent with the general plan, or, if there is such a provision, the provision was adopted after January 1, 1983.

(ii) The project is consistent, as determined by the appeal board, with the general plan.

(3) That the specified hazardous waste facility is consistent with the county hazardous waste management plan, if such a plan has been adopted by the county, and approved by the department, pursuant to Article 3.5 (commencing with Section 25135).

(4) That alternative locations for the specified hazardous waste facility project, as identified in the environmental impact report for

the project and in the county hazardous waste management plan, if one has been approved by the department, have been adequately considered by the appeal board in determining the appropriateness of the location chosen for the project.

(5) That reversing the local agency's land use decision is consistent with statewide, regional, and county hazardous waste management policies, goals, and objectives. In making this finding, the appeal board shall consider all of the following factors:

(A) Whether or not a need for the specified hazardous waste facility project has been demonstrated.

(B) Whether or not the specified hazardous waste facility project is of a type, and in a location, that conforms to statewide, regional, or local hazardous waste management policies.

(C) Whether or not the specified hazardous waste facility will be operated using the best feasible hazardous waste management technologies.

(g) The local agency whose land use decision is being appealed may reconsider the action and approve the application for the land use decision, consistent with the appeal board's tentative decision, within 60 days after the appeal board issues its tentative decision. If the local agency does not approve the application for the land use decision consistent with the tentative decision within 60 days after the decision is issued, the appeal board shall, by an affirmative vote of at least four members, issue a final decision. If the final decision reverses the local agency's land use decision, the appeal board shall then require the local agency to approve the application for the land use decision and if the local agency does not approve the application for the land use decision, the Attorney General shall bring an action to require the local agency to approve the application for the land use decision for the specified hazardous waste facility project.

SEC. 6. Section 25199.13 of the Health and Safety Code is amended to read:

25199.13. (a) An appeal board convened by the Governor or the Governor's designee to hear an appeal pursuant to subdivision (d) or (e) of Section 25199.9 shall follow the procedures and requirements specified in this section.

(b) Within 30 days after the Governor or the Governor's designee determines that an appeal board should be convened pursuant to subdivision (d) or (e) of Section 25199.9, an appeal board shall be convened and a public hearing held in the city or county where the specified hazardous waste facility project is located. At the hearing, the proponent or the interested party and the local agency whose land use decision is being appealed shall present arguments and evidence to the appeal board concerning whether or not the appeal should be accepted.

The arguments and evidence presented to the appeal board convened pursuant to subdivision (d) of Section 25199.9 shall only concern whether or not a condition or conditions imposed on the operation of the facility by the land use decision are so onerous and

restrictive that their imposition is the same as a disapproval of the application for a land use decision. The arguments and evidence presented to the appeal board convened pursuant to subdivision (e) of Section 25199.9 shall only concern whether or not a condition or conditions imposed on the project by the land use decision do not adequately protect the public health, safety, and welfare.

(c) Within 15 days after the date of the public hearing, the appeal board shall decide whether or not to accept the appeal. The appeal board may accept an appeal only by an affirmative vote of five members of the appeal board. The appeal board shall make its decision based upon the arguments and evidence presented at the hearing. The appeal board's decision shall be in writing, shall be signed by the members who voted in favor of the decision, and shall state the reasons for accepting or rejecting the appeal. The appeal board may not accept the appeal unless it finds that the proponent or interested party has demonstrated a substantial likelihood of prevailing on the merits if the appeal is accepted for hearing.

(d) If the appeal board accepts the appeal, within 30 days after this decision, the appeal board shall hold a public hearing in the city or county where the specified hazardous waste facility project is located to hear the arguments and evidence it requires to make a decision on the appeal. The appeal board shall restrict the scope of the hearing to those matters which the appeal board determines are directly related to the subject matter of the appeal. In making a decision pursuant to the hearing, the appeal board shall adopt a rebuttable presumption that the local agency's land use decision is supported by substantial reasons and that there are no compelling reasons to modify it. In all matters related to the appeal, the burden of proof shall be with the proponent or the interested party to rebut this presumption and to establish, by clear and convincing evidence, that there are compelling reasons to modify the local agency's land use decision.

(e) Within 30 days after the public hearing, the appeal board shall, by an affirmative vote of at least five members, issue a decision on the appeal. The decision shall be written, shall be signed by the members in favor of the decision, and shall include the reasons for the decision.

(f) If the appeal board is convened by the Governor or the Governor's designee pursuant to subdivision (d) of Section 25199.9, the appeal board shall not issue a decision modifying the local agency land use decision, unless the appeal board finds that there is clear and convincing evidence that one or more conditions imposed on the facility by the land use decision are so onerous and restrictive that their imposition is the same as a disapproval of the application for a land use decision. If the appeal board agrees with the proponent concerning these conditions, the appeal board shall require the local agency to modify the condition or conditions imposed by the land use decision, as the appeal board deems necessary. If the local agency does not modify the terms of the local land use decision, as required

by the appeal board, the Attorney General shall bring an action to require the local agency to modify the local land use decision in accordance with the determination of the appeal board.

(g) If the appeal board is convened by the Governor or the Governor's designee pursuant to subdivision (e) of Section 25199.9, the appeal board shall not issue a decision approving the appeal of the interested person unless the appeal board finds that there is clear and convincing evidence that the land use decision approved by the local agency failed to impose one or more conditions necessary to protect the public health, safety, or welfare. If the appeal board approves the appeal of the interested person concerning these conditions, the appeal board shall require the local agency to modify the land use decision in accordance with the appeal board's decision. If the local agency does not modify the land use decision as required by the appeal board, the Attorney General shall bring an action to require the local agency to modify the land use decision in accordance with the determination of the appeal board.

SEC. 7. 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. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary changes relating to the permitting of new hazardous waste facilities, thereby protecting the public health and safety, it is necessary that this act take effect immediately.

CHAPTER 1355

An act to add Section 99317.1 to the Public Utilities Code, relating to railroads, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Section 99317.1 is added to the Public Utilities Code, to read:

99317.1. (a) Funds appropriated pursuant to subdivision (a) of Section 99317 shall, in addition to the purposes specified in that section, be allocated for short-line railroad rehabilitation projects, through the transit capital improvement program.

(1) Projects eligible for funding pursuant to this subdivision shall

be limited to railroad rehabilitation projects.

(2) To be eligible for funding pursuant to this subdivision, a project proposal shall be submitted by a public entity. The public entity shall submit a project proposal only if it has made a finding, following a public hearing, that rail service on the affected railroad would be in imminent danger of being discontinued without the expenditure of public funds, and that continuation of the service serves a public purpose.

(b) The department and other public entities may submit applications to the department for allocations for transit capital improvements for short-line railroads from funds made available pursuant to subdivision (a) of Section 99312.

(1) The department shall evaluate applications submitted pursuant to this subdivision in accordance with criteria and procedures adopted by the commission, and shall submit the applications and its recommendations thereon to the commission not later than February 1 of each year.

(2) The commission shall adopt criteria and procedures to be followed by the department in evaluating the applications.

(c) As used in this section, "short-line railroad" means any standard gauge railroad which is being, or is planned to be, used for passenger service, other than a class I railroad, as that term is used and applied in federal law.

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 essential rehabilitation projects may be undertaken at the earliest possible time on those short-line railroads which are in imminent danger of being discontinued, it is necessary that this act take effect immediately.

CHAPTER 1356

An act to amend Sections 501 and 505 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 501 of the Welfare and Institutions Code is amended to read:

501. (a) There is hereby established in the Office of Criminal Justice Planning a program of financial assistance for law enforcement, district attorneys, probation departments, juvenile courts, and schools, designated the Serious Habitual Offender

Program. All funds appropriated to the Office of Criminal Justice Planning for the purposes of this article shall be administered and disbursed by the executive director of that office, and shall, to the greatest extent feasible, be coordinated or consolidated with federal funds that may be made available for these purposes.

(b) From moneys appropriated therefor, the Executive Director of the Office of Criminal Justice Planning may allocate and award funds to agencies in which programs are established in substantial compliance with the policies and criteria set forth in this article. Awards made to individual agencies shall not exceed three years in duration. An agency receiving an award shall provide matching funds at an increasing rate each year; the rate shall be as determined by the Office of Criminal Justice Planning for that agency.

(c) Allocation and award of funds for the purposes of this article shall be made upon application by a district attorney, a local law enforcement agency, a probation department, or a school district, that has been approved by the appropriate governing board of the particular agency. The applicant agency shall use the funds to create an information gathering and analysis unit responsible for the identification of serious habitual offenders and for the dissemination of information about the activities of those offenders to the juvenile justice system. This unit shall participate in the planning, support, and assistance of activities required in Sections 503 to 506, inclusive. Funds disbursed under this article shall not supplant local funds that would, in absence of the program established by this article, be made available to support the juvenile justice system. Local grant awards made under the program shall not be subject to review as specified in Section 14780 of the Government Code.

SEC. 2. Section 505 of the Welfare and Institutions Code is amended to read:

505. Within three months of implementation of the program, all participating agencies in a county shall execute a written interagency agreement outlining their role in the program, including the duties they will perform, the duties other agencies will perform for and with them, and the categories of information to be collected and the plan for its distribution and use. All participating agencies will meet no less than once each month to plan, implement, and refine the operation of the program and to exchange information about individuals subject to the program or other related topics.

CHAPTER 1357

An act to amend Sections 502 and 12022.6 of, and to add Sections 502.01, 1203.047, 1203.048, and 2702 to, the Penal Code, relating to crime.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

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

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means two or more computer systems connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (i), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars

($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) This section applies only to public offenses committed on or after January 1, 1988. It is the intent of the Legislature that this section be given no retroactive effect and persons who commit a violation of the provisions of Section 502 in effect prior to January 1, 1988, shall be held responsible therefor.

(h) Any computer, computer system, computer program, instrument, apparatus, device, plans, instructions, or written publication used in the commission of any public offense described in subdivision (c) may be seized under warrant or incident to a lawful arrest. Any property seized under this subdivision is subject to forfeiture pursuant to Section 502.01.

(i) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed one hundred dollars ($100).

(j) No activity exempted from prosecution under paragraph (2) of subdivision (i) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(k) For purposes of bringing a civil or a criminal action under this

section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(*l*) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 1.1. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

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

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not

programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (i), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used

computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) This section applies only to public offenses committed on or after January 1, 1988. It is the intent of the Legislature that this section be given no retroactive effect and persons who commit a violation of the provisions of Section 502 in effect prior to January 1, 1988, shall be held responsible therefor.

(h) Any computer, computer system, computer program, instrument, apparatus, device, plans, instructions, or written publication used in the commission of any public offense described in subdivision (c) that is owned by the defendant may be seized under warrant or incident to a lawful arrest. Any property seized under this subdivision is subject to forfeiture pursuant to Section 502.01.

(i) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or

her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(j) No activity exempted from prosecution under paragraph (2) of subdivision (i) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(k) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(*l*) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 1.2. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

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

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a

computer, computer system, or computer network.

(2) "Computer network" means two or more computer systems connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (h), any person who

commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars

($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 1.3. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

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

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(3) Knowingly and without permission uses or causes to be used computer services.

(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (3) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars ($400), by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars ($400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine

and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars ($250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars ($5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars ($5,000), by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the

commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars ($100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 2. Section 502.01 is added to the Penal Code, to read:

502.01. (a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is a computer, computer system, or computer network, and any software or data residing thereon, if the computer, computer system, or computer network was used in committing a violation of subdivision (c) of Section 502 or a violation of subdivision (b) of Section 502.7 or was used as a repository for the storage of software or data obtained in violation of those provisions. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) "Sentencing court" means the court sentencing a person found guilty of violating subdivision (c) of Section 502 or a violation

of subdivision (b) of Section 502.7 or, in the case of a minor found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) "Interest" means any property interest in the property subject to forfeiture.

(4) "Security interest" means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and a copy of the motion to the prosecuting agency and to the probation department.

If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of subdivision (c) of Section 502 or subdivision (b) of Section 502.7, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for such a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

(1) The court shall determine the value of the property.

(2) The court shall determine the value of each valid interest in the property.

(3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined

under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of subdivision (c) of Section 502 or subdivision (b) of Section 502.7 within two years after the date on which the minor is sentenced, and the violation involves a computer owned by the parent or guardian, the original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(f) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(g) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at

auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (f).

SEC. 3. Section 1203.047 is added to the Penal Code, to read:

1203.047. A person convicted of a violation of paragraph (1), (2), (4), or (5) of subdivision (c) of Section 502, or of a felony violation of paragraph (3), (6), (7), or (8) of subdivision (c) of Section 502, or a violation of subdivision (b) of Section 502.7 may be granted probation, but, except in unusual cases where the ends of justice would be better served by a shorter period, the period of probation shall not be less than three years and the following terms shall be imposed. During the period of probation, that person shall not accept employment where that person would use a computer connected by any means to any other computer, except upon approval of the court and notice to and opportunity to be heard by the prosecuting attorney, probation department, prospective employer, and the convicted person. Court approval shall not be given unless the court finds that the proposed employment would not pose a risk to the public.

SEC. 4. Section 1203.048 is added to the Penal Code, to read:

1203.048. (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 convicted of a violation of Section 502 or subdivision (b) of Section 502.7 involving the taking of or damage to property with a value exceeding one hundred thousand dollars ($100,000).

(b) The fact that the value of the property taken or damaged was an amount exceeding one hundred thousand dollars ($100,000) 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 guilt or nolo contendere or by trial by the court sitting without a jury.

(c) When probation is granted, 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.

SEC. 5. Section 2702 is added to the Penal Code, to read:

2702. No person imprisoned after conviction of a violation of Section 502 or of subdivision (b) of Section 502.7 shall be permitted to work on or have access to any computer system of the department.

SEC. 6. Section 12022.6 of the Penal Code is amended to read:

12022.6. Any person who takes, damages or destroys any property in the commission or attempted commission of a felony, with the intent to cause such taking, damage or destruction, and the loss

exceeds:

(a) Twenty-five thousand dollars ($25,000), the court shall in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted impose an additional term of one year.

(b) One hundred thousand dollars ($100,000), the court shall in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted impose an additional term of two years.

The additional terms provided in this section shall not be imposed unless the facts of the taking, damage, or destruction in excess of the amounts provided in this section are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

This section applies to, but is not limited to, property taken, damaged, or destroyed in violation of Section 502 or subdivision (b) of Section 502.7.

SEC. 7. (a) Section 1.1 of this bill incorporates amendments to Section 502 of the Penal Code proposed by both this bill and SB 304. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 502 of the Penal Code, and (3) SB 1012 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 304, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 502 of the Penal Code proposed by both this bill and SB 1012. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 502 of the Penal Code, (3) SB 304 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1012 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 502 of the Penal Code proposed by this bill, SB 304, and SB 1012. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 502 of the Penal Code, and (3) this bill is enacted after SB 304 and SB 1012, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

SEC. 8. If this bill and SB 1012 are both enacted and become operative on January 1, 1990, and both bills add Section 502.01 to the Penal Code, then Section 502.01 of the Penal Code, as added by SB 1012, 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.

However, notwithstanding Section 17610 of the Government

Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1358

An act to add Article 14.7 (commencing with Section 1915) to Chapter 6 of Part 2 of the Education Code, and to add and repeal Section 1203m of the Penal Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. This act shall be known, and may be cited, as the " Youth and Adult Offender Education and Crime Prevention Act of 1989."

SEC. 2. (a) The Legislature finds and declares the following:

(1) Roughly 30 percent of California's public school pupils drop out before graduating from high school.

(2) Of those graduating, roughly 30 percent are semiliterate or illiterate.

(3) The dropout rate, semiliteracy, and illiteracy may well threaten the continued economic vitality of the state through factors that include costly remedial education and training programs, higher governmental health and welfare costs, declining commercial and industrial employee pools, employee absenteeism, and, as a result, diminishing commercial and industrial productivity.

(4) The dropout rate, semiliteracy, and illiteracy are contributing factors to burgeoning drug traffic and abuse, increasing crime rates, and escalating youth and adult custodial populations, which directly cost crime victims billions of dollars annually in insurance premiums, property losses, personal injuries, and death, and indirectly cost taxpayers several billions of additional dollars annually to operate remedial education programs and to administer criminal justice, youth, and adult custodial facilities, and health and welfare agencies, at both state and local levels.

(5) Planning, designing, and implementing methods to reduce the dropout rate, semiliteracy, and illiteracy should be priorities of appropriate public and private elements of California's social, economic, civic, educational, governmental, and political communities, especially state and local benches and bars, business and labor organizations, youth service agencies and organizations, criminal justice agencies, public schools, youth and adult custodial and correction facilities, and health and welfare agencies.

(b) The Legislature further finds and declares that, while current law permits adult offenders placed on probation to be ordered by the courts to seek and maintain gainful employment, the law is not altogether clear, structured, and comprehensive as to the nature and extent of institutional discretion to require youth or adult offenders to seek and maintain enrollment and effective progression in educational programs designed to help them remedy problems they face, which may stem from dropping out of school, semiliteracy, and illiteracy, and which may deter or prevent their search for, and maintenance of, gainful employment. The law does, however, permit the courts to order youth and adult offenders placed on probation to pursue educational programs in certain circumstances, and requires local youth and adult custodial and correctional facilities to provide education programs, including library facilities.

(c) It is the intent of the Legislature to accomplish all of the following:

(1) To encourage systematic local evaluation, correlation, and indexing of existing school dropout prevention, literacy, education, and training programs for youth and adult probationers and inmates.

(2) To encourage local experimentation with new, and the expansion of existing, programs of school dropout prevention, at-risk youth initiatives, and youth and adult probationer and inmate education and crime prevention, and relevant libraries, through collaboration and planning between county superintendents of schools, county sheriffs, county district attorneys, county public defenders, county chief probation officers, county directors of health and welfare, and city police chiefs in cooperation with appropriate public and private agencies and organizations. The objective of that experimentation shall be to consider and pursue local methods to identify, evaluate, index, improve, and expand both mainstream and alternative dropout programs and educational opportunities for at-risk youth, including the active implementation of Section 44806 of the Education Code, citizenship training, law-related and character education programs, and alternative or opportunity schools and their libraries.

(3) To encourage the courts, probation departments, and public schools to work together to identify youth and adult offenders who are potentially amenable to educational opportunities, and for the courts to consider requiring those offenders, as a condition of probation, to participate in appropriate public or private literacy, education, and training programs formulated and conducted to assist

them to improve their reading, writing, speaking, and calculating skills, to help increase their opportunities to become employable, to enhance their levels of employability, and to thus decrease their criminal behavior, so as to reduce public and private costs, both direct and indirect, of criminal misconduct.

(d) To further all of the above purposes, the Legislature finds and declares its intent that local governmental agencies should cooperate and collaborate to actively educate and meaningfully involve parents and civic and community leaders and organizations in a broad range of activities related to those purposes, recognizing, in particular, the pivotal role parental encouragement, support, perspectives, and values have in shaping children's self-esteem, goals, knowledge of and respect for the law, interests, attitudes, commitments, educations, avocations, and vocations. This effort should include the promotion of parental involvement in dropout prevention and educational programs for their children who are at risk or in custody.

SEC. 3. Article 14.7 (commencing with Section 1915) is added to Chapter 6 of Part 2 of the Education Code, to read:

Article 14.7. Youth and Adult Offender Education

1915. In addition to any educational opportunity available under Article 14.5 (commencing with Section 1900), any youth or adult offender in custody in Sacramento County shall be permitted, notwithstanding any other provision of law, to enroll in any appropriate educational program operated by a school district, community college district, or private school in that county, subject to the objectives, standards, and conditions set forth in Section 1203m of the Penal Code.

1916. (a) For the purposes of the pilot project described in subdivision (a) of Section 1203m of the Penal Code, the chief probation officer of Sacramento County, in collaboration with the county superintendent of schools of that county and other appropriate state and local agencies, including the President of the California State University, Sacramento and the chancellor of each community college in the county, shall do all of the following:

(1) Identify and propose appropriate programs, and develop screening methods and procedures to assist the courts to select those defendants who are most likely to succeed in and benefit from the pilot project. The selection criteria employed for this purpose may include limited reading ability, a low level of educational attainment, or a lack of employment skills.

(2) Propose, in cooperation with the superior and municipal courts of Sacramento County, appropriate minimum standards of academic progress for local youth and adult offender education and crime prevention programs.

(3) Carefully monitor progress, timing, and deadlines.

(4) Delegate and supervise relevant local research, evaluation, correlation, indexing, and review.

(5) Determine how the various entities with whom the chief probation officer collaborates may, individually and collectively, help to promote youth and adult offender education and crime prevention.

(6) Determine what is being done in local, adult, and juvenile custodial facilities to educate those in custody.

(7) Evaluate the nature and extent of existing library resources, those in construction, and any library resources planned for the future in local juvenile and adult custodial facilities.

(8) Consider the nature and extent of local interagency, multidisciplinary collaboration and cooperation between public and private agencies and organizations and custodial facilities, and between those local agencies and organizations, and parallel entities at the state level.

(9) Determine appropriate standards to conduct the evaluations provided for by this subdivision.

(10) Work with professional, business, and labor organizations to develop employment opportunities for youth and adult offenders who have completed their conditions of probation in a successful and timely manner, including, but not limited to, those conditions applicable pursuant to Section 1203m of the Penal Code.

(11) Expand on the issues set forth in this subdivision so as to include all appropriate, related issues.

(b) The county office of education shall contract with a qualified institution of higher education for the evaluation of the pilot project, which evaluation shall be updated as required for purposes of subdivision (c). For the purposes of that evaluation, the county superintendent of schools, with the assistance of the chief probation officer, shall maintain, and provide to that institution, data regarding the participants in the pilot project that includes, but is not limited to, the following: achievement of learning objectives; avoidance of additional criminal activity; violations of conditions of parole; success in securing gainful employment; wage levels prior to, and after, participation in the pilot project; attendance, subsequent to completion of participation in the pilot project, in literacy or educational programs; and independence from public assistance. In addition to the issues described in this paragraph, the evaluation shall contain a cost-benefit analysis of the public moneys saved as a result of participation in the pilot project, as compared to public costs that would otherwise be incurred based on the likelihood of subsequent criminal activity on the part of the offender. The pilot project shall be deemed to be successful if both of the following conditions are met:

(1) There is an improvement of at least 75 percent in the rate at which participants avoid additional criminal activity during their participation in the project, as compared to the rate that would otherwise be expected of those specific participants as a group.

(2) The participants progress, on average, at least two grade levels for each year of instruction under the project, as adjusted

proportionately for any participation of less than one year.

(c) No later than March 31, 1991, the institution of higher education shall prepare and publish a formal, written report on the findings under subdivision (a) and the results of the evaluation conducted pursuant to subdivision (b). No later than March 31, 1992, and, again, no later than March 31, 1993, the institution of higher education shall prepare and publish a followup report, which shall contain updated results of the evaluation conducted pursuant to subdivision (b), and should include recommendations for the improvement, expansion, and funding of education programs and libraries pursuant to the purposes of this section.

SEC. 4. Section 1203m is added to the Penal Code, to read:

1203m. (a) In each of the 1990, 1991, and 1992 calendar years, up to 200 criminal defendants between the ages of 18 and 25 years, inclusive, who are sentenced in the Superior Court of Sacramento County, and up to 200 criminal defendants of that age who are sentenced in the Municipal Court of Sacramento County may be required, as a condition of probation, to enroll, and to maintain reasonable progress, in public or private literacy or other educational programs designated by the court. The programs designated for this purpose may be operated in any school district, community college district, or private school, and shall be designed and operated to assist in the improvement of reading, writing, speaking, and calculating skills, to increase the number and quality of employment opportunities, and to reduce the likelihood of criminal behavior, so as to reduce the public and private costs, both direct and indirect, of criminal misconduct. Each probationer may be required, pursuant to this requirement, to complete up to 200 hours of instruction over a period of one year.

(b) Any school district or community college district in which any probationer enrolls pursuant to this section shall be entitled, as a result, to state funding calculated in accordance with average daily attendance computations as set forth in the Education Code. Any probationer who enrolls in a private school pursuant to this section shall pay the enrollment costs for that program.

(c) For purposes of this section, the first calendar year shall commence on January 1, 1990. Thereafter, each subsequent calendar year shall commence one year from the first day of the prior calendar year.

(d) This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1994, deletes or extends that date.

SEC. 5. (a) Because of existing, ongoing, and positive communication and cooperation between relevant agencies and organizations, the Legislature finds and declares that Sacramento County is an especially appropriate and amenable site for an experimental multidisciplinary program, of limited duration, to require a number of youth and adult offenders, as a condition of their probation, to participate in literacy and other educational training,

in part for the reason that a major local custodial facility is currently under construction in Sacramento County and will open for use at a particularly opportune time.

(b) Due to the unique circumstances specified in subdivision (a) concerning Sacramento 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.

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

SEC. 7. 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. 8. (a) The sum of one hundred eighteen thousand five hundred dollars ($118,500) is hereby reappropriated from Item 6110-156-001 of Section 2.00 of the Budget Act of 1989 to the Sacramento County Office of Education to fund the first year of the pilot project established pursuant to Article 14.7 (commencing with Section 1915) of Chapter 6 of Part 2 of the Education Code and Section 1203m of the Penal Code. Of that sum, up to ninety-three thousand five hundred dollars ($93,500) shall be available to the Sacramento County Probation Department only for services rendered as part of the pilot project, up to twenty thousand dollars ($20,000) shall be available for evaluation of the project, and up to five thousand dollars ($5,000) shall be available for the administrative costs of the Sacramento County Office of Education incurred in the course of administering the pilot project. Funds not expended during the first year of the pilot project may be carried over into the following year to continue funding the project. If the appropriation made under this section is calculated pursuant to paragraph (2) of subdivision (a), the amount set forth under this subdivision for services rendered by the Sacramento County Probation Department, for evaluation of the pilot project, and for administrative costs shall each be reduced in proportion to the amount by which the sum calculated pursuant to paragraph (2) of subdivision (a) reflects a reduction from the sum set forth in paragraph (2) of that subdivision.

(b) The appropriation set forth in subdivision (a) is calculated by the Legislature to provide funding for the pilot project for the period

from January 1, 1990, to June 30, 1990. It is the intent of the Legislature that funding for the pilot project described in subdivision (a) in subsequent fiscal years not exceed annually the sum of two hundred thirty-seven thousand dollars ($237,000).

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 that critical problems of illiteracy and criminal behavior may be addressed in a timely manner by the program of rehabilitational education provided for by this act, it is necessary that this act take effect immediately.

CHAPTER 1359

An act to amend Sections 4700.2, 4726, 4726.1, and 4801.1 of, to amend and repeal Sections 4701 and 4801.6 of, and to add Chapter 5 (commencing with Section 4390) to Title 1.5 of Part 5 of Division 4 of, the Civil Code, to amend Sections 708.730, 708 740, and 708.780 of, and to add Section 704.114 to, the Code of Civil Procedure, to amend Section 972 of the Evidence Code, to amend Sections 1151.5 and 12419.3 of the Government Code, and to amend Section 11475.1 of, and to repeal Section 11484 of, the Welfare and Institutions Code, relating to family law.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Chapter 5 (commencing with Section 4390) is added to Title 1.5 of Part 5 of Division 4 of the Civil Code, to read:

CHAPTER 5. ASSIGNMENTS

4390. Unless the provision or context otherwise requires, the following definitions in this chapter govern the construction of this chapter.

(a) "Assignment" has the same meaning as "wage assignment."

(b) "Due date of support payments" shall be the date specifically stated in the order of support or, if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.

(c) "Earnings," to the extent that these earnings are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, includes:

(1) Wages, salary, bonus, money, and benefits described in

Sections 704.110, 704.113, and 704.115 of the Code of Civil Procedure.

(2) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights.

(3) Payments of credits due or becoming due as a result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(4) Any other payments or credits due or becoming due periodically as a result of an enforceable obligation.

(d) "Employer" means a person for whom an individual performs services as an employee, as defined in Section 706.011 of the Code of Civil Procedure, and includes the United States government and any public entity as defined in Section 811.2 of the Government Code and any person or entity paying earnings as defined under subdivision (c).

(e) "IV-D Case" means any case being established, modified, or enforced by the district attorney pursuant to Section 454 of the Social Security Act.

(f) "Obligee" or "assigned obligee" means either the person to whom support has been ordered to be paid, the district attorney, or other person designated by the court to receive the payment. The district attorney shall be the obligee for all cases as defined under subdivision (e) or in which an application for services has been filed under Title IV-D or IV-E of the Social Security Act.

(g) "Obligor" means any person owing a duty of support.

(h) "Support" refers to an obligation owing on behalf of a child, spouse, or family; where appropriate, it also refers to past due support or arrearage.

(i) "Timely payment" means receipt of support payments by the obligee or assigned obligee within five days of the due date.

4390.1. Any reference to the district attorney in this chapter shall apply only when the district attorney is otherwise ordered or required to act pursuant to existing law. Nothing in this chapter shall be deemed to mandate additional enforcement or collection duties upon the district attorney beyond those imposed under existing law.

4390.2. Arrearages of payment shall be computed on the basis of the payments owed and unpaid on the date that the obligor has been given notice of the order of assignment.

4390.3. (a) On and after July 1, 1990, whenever the court orders either party to pay any amount of support or orders a modification of the amount of support to be paid, the court shall also order the obligor to assign to an obligee that portion of his or her earnings due or to be due in the future as will be sufficient to pay the amount ordered by the court for support. The court shall include a wage assignment order in any order or judgment establishing or modifying support. Upon the filing and service of a notice of motion or order to show cause with the supporting application, an obligee may request the court to issue a wage assignment to enforce an existing support order or to modify an existing wage assignment order.

(b) All orders for wage assignment entered pursuant to this section shall be effective upon compliance with the procedures set forth in Section 4390.8, unless stayed pursuant to subdivision (c).

(c) The court may order that service of the wage assignment be stayed only if the court makes a finding of good cause to stay service of the wage assignment. Good cause is limited to the following:

(1) The obligor has a history of uninterrupted, full, and timely payment of previously ordered support in the preceding 12 months; however, an obligor who has not been subject to an order of support for 12 months prior to the issuance of the wage assignment may qualify for good cause subject to this provision if the obligor posts with the clerk of the court a cash bond or cash in an amount equal to 3 months' support.

Notwithstanding the above, good cause to stay service of the wage assignment shall not be found if an obligor owes an arrearage for prior support.

(2) The obligor proves, and the court finds, by clear and convincing evidence that service of the wage assignment would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that any stay ordered under this paragraph will automatically terminate.

(3) The parties sign a written agreement which provides for an alternative arrangment to ensure payment of the support obligation as ordered other than through the immediate service of a wage assignment. This written agreement may include an agreement relating to the staying of the service of a wage assignment. Any agreement between the parties which includes the staying of the service of a wage assignment shall include the agreement of the district attorney in any case in which support is ordered to be paid through a county officer designated for that purpose. The signing of an agreement pursuant to this paragraph shall not preclude the party from seeking an assignment in accordance with the procedures set forth in Section 4390.4 upon violation of this agreement.

(4) The employer or district attorney has been unable to deliver payments under the assignment for a period of six months due to the failure of the obligee to notify the employer or district attorney of a change of address.

4390.4 (a) If service of the assignment has been ordered stayed, the stay shall terminate pursuant to subdivision (b) upon the obligor's failure to make timely support payments or earlier by court order if requested by the district attorney or by the obligor. The stay shall terminate earlier by court order if requested by any other obligee who can establish that good cause, as defined in Section 4390.3, no longer exists.

(b) The obligee shall file a declaration signed under penalty of perjury by the obligee that the obligor is in arrears in payment of any portion of the support. At the time of filing the declaration, the stay shall terminate by operation of law without notice to the obligor.

(c) In addition to any other penalty provided by law, the filing of

the declaration with knowledge of the falsity of its contents is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

4390.5. (a) For support orders first issued or modified before July 1, 1990, this section provides a procedure for obtaining a wage assignment when the court in ordering support or modification of support did not issue a wage assignment. Any obligee seeking issuance of a wage assignment to enforce such a support order may use the procedure set forth in this section by filing an application, or by notice of motion or order to show cause, or pursuant to Section 4390.3.

Under this section, a wage assignment shall in any event be issued only upon an application signed under penalty of perjury by the obligee that the obligor is in default in support payments in a sum equal to the amount of support payable for one month, for any other occurrence specified by the court in the support order, or earlier by court order if requested by the district attorney or the obligor.

(b) In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration or notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

(c) Upon receipt of the application, the court shall issue, without notice to the obligor, an order requiring the obligor to assign to the obligee that portion of the earnings of the obligor due or to be due in the future as will be sufficient to pay the amount ordered by the court for support. The order shall operate as an assignment.

(d) In cases in which the order for support does not contain a provision for wage assignment, the application shall state that the obligee has given the obligor a written notice of his or her intent to seek a wage assignment in the event of a default in support payments and that the notice was transmitted by first-class mail, postage prepaid, or personally served at least 15 days prior to the date of the filing of the application. The written notice of intent to seek a wage assignment required by this subdivision may be given at any time, including at the time of filing a petition or complaint in which support is requested or at any time subsequent thereto.

(e) The obligor may at any time waive the written notice required by this section.

4390.6. If the obligee making the application under Section 4390.3, 4390.4, or 4390.5 also states that the whereabouts of the obligor or the identity of his or her employer are unknown to the party to whom support has been ordered to be paid, the district attorney shall contact the California parent locator service maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the obligor and the name and address of the obligor's last known employer.

4390.7. (a) Orders for wage assignment required or authorized

by this chapter shall include a requirement that the obligor notify the obligee of any change of employment and of the name and address of his or her new employer within 10 days of obtaining new employment.

(b) After the obligor has left employment with the employer, the employer, at the time the next payment is due on the wage assignment, shall notify the obligee that the obligor has left employment by first-class mail, postage prepaid, to the last known address of the obligee.

(c) Orders for wage assignment shall be binding upon any existing or future employer of the obligor upon whom a copy of the order is served.

4390.8. (a) An assignment order shall become effective as soon as possible but not later than 10 days after service of the order on an employer. The employer shall commence withholding pursuant to the assignment order from all earnings of the employee payable for any pay period of that employee which ends after the assignment becomes effective. Service on an employer of an assignment order issued pursuant to this chapter may be made by first-class mail in the manner prescribed in Section 1013 of the Code of Civil Procedure.

(b) Within 10 days of service of an assignment order on an employer, the employer shall deliver a copy of the assignment order to the obligor, together with a written statement of the obligor's rights under the law to move to quash the assignment.

4390.9. (a) An obligor may move to quash an assignment order within 10 days after service on the obligor of notice of the assignment order by his or her employer if the obligor states under oath that the assignment order does not correctly state the amount of current or overdue support ordered by the courts, that the alleged obligor is not the obligor from whom support is due, or that the amount to be withheld exceeds that allowable under federal law in subdivision (b) of Section 1673 of Title 15 of the United States Code.

(b) In any case in which an assignment is sought under Section 4390.5, the party ordered to pay support may move to quash the order for wage assignment based upon subdivision (c) of Section 4390.3.

(c) If a wage assignment order which has been issued and served on a prior employer is served on the obligor's new employer, the obligor does not have the right to move to quash the assignment on any grounds which the obligor previously raised when the assignment was served on his or her prior employer or on any grounds which the obligor could have raised when the assignment was served on the prior employer but failed to raise.

(d) A finding of error in the amount of the current support or arrearage or that the amount exceeds federal or state limits is not grounds to vacate the assignment order. The court shall modify the order to reflect the correct or allowable amount of support or arrearages. The fact that the obligor may have subsequently paid the arrearages shall not relieve the court of its duty to enter the order

for the assignment.

4390.10. (a) The employer shall continue to withhold and forward support as ordered by the court until served with notice terminating the wage assignment order. The employer shall send the amounts withheld to the obligee within 10 days of the date the obligor is paid. The employer may deduct from the earnings of the employee the sum of one dollar ($1) for each payment made pursuant to the order.

(b) An employer who willfully fails to withhold and forward support pursuant to a currently valid order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee. In addition to any other penalty or liability provided by law, willful failure by an employer to comply with such an order is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure.

(c) Service of the wage assignment creates a lien on the earnings of the employee and the property of the employer to the same extent as the service of an earnings withholding order as provided in Section 706.029 of the Code of Civil Procedure.

4390.11. (a) The motion and notice of motion to quash the assignment order shall be filed with the court issuing the order within 10 days after service on the obligor of notice of the order by the employer.

(b) The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion. The obligor shall serve personally or by first-class mail, postage prepaid, a copy of the motion and notice of motion on the obligee named in the wage assignment no less than 10 days prior to the date of the hearing.

4390.12. (a) When an assignment or assignments include both current support and payments towards the liquidation of arrearages, priority shall be given first to the current child support obligation, then the current spousal support obligation, and thereafter to the liquidation of child then spousal support arrearages.

(b) Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

4390.13. (a) The obligee shall notify the employer of the obligor, by first-class mail, postage prepaid, of any change of address within a reasonable period of time after the change.

(b) In instances in which payments have been ordered to be made to a county officer designated by the court, the obligee who is the parent, guardian, or other person entitled to receive payment through the designated county officer shall notify the designated county officer by first-class mail, postage prepaid, of any address change within a reasonable period of time after any such change.

(c) If the employer or designated county officer is unable to deliver payments under the assignment for a period of six months

due to the failure of the obligee to notify the employer or designated county officer of a change of address, the employer or designated county officer shall not make any further payments under the assignment and shall return all undeliverable payments to the obligor.

4390.14. Upon the filing and service of a motion and a notice of motion by the obligor, the court shall terminate an order of assignment if past due support has been paid in full, including any interest due, and if one of the following conditions exists:

(a) With regards to orders for spousal support, the death or remarriage of the spouse to whom support is owed.

(b) With regards to orders for child support, the death or emancipation of the child for whom support is owed.

(c) The court determines that there is good cause, as defined in Section 4390.3, to terminate the assignment. This subdivision does not apply if there has been more than one application for a wage assignment.

(d) The termination of the stay of a wage assignment under Section 4390.4 was improper, but only if that termination was based upon the obligor's failure to make timely support payments as described in subdivision (b) of Section 4390.4.

4390.15. The Judicial Council shall prescribe forms necessary to carry out the requirements of this chapter, including the written statement of the obligor's rights, the order for wage assignment, the instruction guide for obligees and obligors, application forms required under Sections 4390.3, 4390.4, and 4390.5, the notice form required under Section 4390.5, and revised judgment and order forms as necessary.

4390.16. (a) The employer shall cooperate with and provide relevant employment and income information to the district attorney for the purpose of establishing, modifying, or enforcing the support obligation. The employer shall incur no liability for providing this information to the district attorney.

(b) The state agency or the local agency, designated to enforce support obligations as required by federal law, shall allow employers to simplify the process of wage withholding by forwarding, as ordered by the court, the amounts of support withheld under more than one court order in a consolidated check, accompanied by an itemized accounting providing names, social security number or other identifying number, and the amount attributable to each obligor.

4390.17. No employer shall use any assignment authorized by this chapter as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who engages in the conduct prohibited by this section may be assessed a civil penalty of a maximum of five hundred dollars ($500).

4390.18. In any case where support is ordered to be paid through the county officer designated by the court on behalf of a minor child or other party not receiving public assistance pursuant to the Family

Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the designated county officer shall forward the support received to the designated payee within the time standards prescribed by federal law and the State Department of Social Services.

4390.19. Nothing in this chapter shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce support obligations, regardless of whether or not the the minor child or the obligee who is the parent, guardian, or other person entitled to receive payment is the recipient of welfare moneys.

SEC. 2. Section 4700.2 of the Civil Code is amended to read:

4700.2. (a) The purpose of this section is to permit inexpensive discovery of facts prior to the institution of an action for the modification of an order for child or family support.

(b) At any time following a judgment of dissolution of marriage or legal separation that provides for payment of child or family support, either the party ordered to pay support or the party to whom support was ordered to be paid or that party's assignee, without leave of court, may serve a request for the production of a completed current income and expense declaration in the form adopted by the Judicial Council.

Methods of discovery other than that described in this subdivision may only be employed if a motion for modification of support is pending. In the absence of a pending motion for modification of support, a request for discovery pursuant to this section may be undertaken no more than once a year. This section may be enforced in the manner specified in Sections 1991, 1991.1, 1991.2, 1992, and 1993 of the Code of Civil Procedure and in the Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure), and any other statutes applicable to the enforcement of procedures for discovery. The Judicial Council shall adopt forms for the use of the procedure provided by this section.

(c) A copy of the prior year's federal and state personal income tax returns shall be attached to the income and expense declaration of each party. A party shall not disclose the contents nor provide copies of the other party's tax returns to anyone except to the court, his or her attorney, his or her accountant, or other financial consultant assisting with matters relating to the proceeding, or any other person as permitted by the court. The tax returns shall be controlled by the court as provided in Section 4700.7.

(d) Service of a request for production of an income and expense declaration pursuant to this section shall be by mail, postage prepaid, return receipt requested, to the last known address of the party to be served, or by personal service.

(e) Upon the subsequent filing of a motion for modification of child or family support by the requesting party, if the court finds that

the income and expense declaration submitted by the responding party pursuant to this section was incomplete, inaccurate, or missing the prior year's federal and state personal income tax returns, or that the declaration was not submitted in good faith, the court may order sanctions against the responding party in the form of payment of all costs of the motion, including the filing fee and the costs of the depositions and subpoenas necessary to be utilized in order to obtain complete and accurate information.

SEC. 3. Section 4701 of the Civil Code is amended to read:

4701. (a) (1) On and after January 1, 1987, in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court shall order either parent or both parents to assign to an assigned payee, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child, unless the parent ordered to pay support demonstrates to the satisfaction of the court that the support payments ordered will be made. This demonstration may include proof of timely payment of previously ordered support for the minor children subject to the action. The wage assignment shall be ordered at the time of trial or entry of a judgment establishing child support, other than a temporary order pending trial. The order shall operate as an assignment and shall be binding upon any existing or future employer of the obligated parent upon whom a copy of the order is served. Any such order of assignment may be modified at any time by the court or, in the case of an arrearage, revoked as provided in subdivision (b).

(2) Notwithstanding paragraph (1), in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to an assigned payee that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. The order shall operate as an assignment and shall be binding upon any existing or future employer of the obligated parent upon whom a copy of the order is served. Any such order may be modified or revoked at any time by the court.

(b) (1) Notwithstanding the provisions of subdivision (a), in any proceeding after January 1, 1987, where the court has ordered either or both parents to pay any amount for the support of a minor child, that order shall contain a provision assigning the wages of the obligor to the assigned payee. Any order for the modification of child support entered after January 1, 1987, which does not otherwise contain a provision for wage assignment, shall also contain a provision assigning the wages of an obligor to the assigned payee. All provisions for wage assignment required pursuant to this subdivision shall be effective only upon an application signed under penalty of perjury by the assigned payee that the obligor is in arrears in payment in a

sum equal to the amount of support payable for one month. Upon receipt of the application, the court shall issue, without notice to the obligor, an order requiring the obligor to assign to the payee that portion of the salary or wages of the obligor due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. Such an order shall operate as an assignment and shall be binding upon any existing or future employer of the obligor ordered to pay support upon whom a copy of the order is served.

(2) In cases in which the order for child support does not contain a provision for wage assignment, the application shall state that the assigned payee has given the obligor a written notice of his or her intent to seek a wage assignment in the event of a default in support payments and that the notice was transmitted by certified mail or personally served at least 15 days prior to the date of the filing of the application. The written notice of intent to seek a wage assignment required by this paragraph may be given at the time of filing a petition or complaint for support or at any time subsequent thereto. In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration of notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure. The obligor may at any time waive the written notice required by this subdivision.

(3) The assigned payee shall notify the employer of the obligor, by any form of mailing requiring a return receipt, of any change of address within a reasonable period of time after the change. In instances in which payments have been ordered to be made to the district attorney, the parent to whom support has been ordered to be paid shall notify the court and the district attorney, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change. If the employer or district attorney is unable to deliver payments under the assignment for a period of six months due to the failure of the individual to whom support has been ordered to be paid to notify the employer or district attorney of a change of address, the employer or district attorney shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

(4) An assignment order made pursuant to this subdivision shall not become effective until 10 days after service of the order on an employer.

(5) Within 10 days of service of an assignment order issued pursuant to this subdivision on an employer, the employer shall deliver a copy of the assignment order to the obligor, together with a written statement of the obligor's rights under the law to move to quash the assignment. The Judicial Council shall adopt a form for the statement.

(6) An obligor alleged to be in default may move to quash an assignment order issued under this subdivision within 10 days after service on the obligor of notice of the assignment order by his or her

employer if the obligor states under oath that there is an error in the amount of current or overdue support, that the alleged obligor is not the obligor from whom support is due, or that the amount to be withheld exceeds that allowable under federal law in subdivision (b) of Section 1673 of Title 15 of the United States Code, to the extent that the amount required to be withheld exceeds the limits specified in federal law. The obligor may also move to quash the assignment if he or she states under oath that a default in payment in a sum equal to the amount of support payable for one month has not occurred. The motion and notice of motion to quash the assignment order shall be filed with the court issuing the assignment order within 10 days after service on the obligor of notice of the order by the employer. The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion and shall mail to the petitioner at the return address contained in the petition a copy of the notice of motion by first-class mail within five days after receipt of the notice of motion. If a finding of an error in the amount of overdue support results in an amount due which is less than one month's support, the assignment of wages shall be quashed accordingly. However, if a finding of an error in the amount of overdue support results in an amount in excess of one month's support, such a finding in the amount of overdue support shall not affect the assignment of that portion of the obligor's wages withheld to pay for current support. A finding of an error in the amount of current support subject to withholding does not affect the assignment of that portion of the obligor's wages withheld to pay overdue support.

(7) The employer shall continue to withhold and forward support as ordered by the court until served with notice that the motion to quash under this subdivision has been granted. The employer shall send the amounts withheld to the assigned payee within 10 days of the date the obligor is paid. An employer who willfully fails to withhold and forward support pursuant to a currently valid order entered and served upon the employer pursuant to this section is liable to the assigned payee for the amount of support not withheld, forwarded, or otherwise paid to the assigned payee. Willful failure by an employer to comply with such an order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(8) The due date of support payments under this subdivision shall be the date specifically stated in the order of support or if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.

(9) For purposes of this subdivision, arrearages of payment shall be computed on the basis of the payments owed and unpaid on the date that the obligor has been given notice of the order of assignment and the fact that the obligor may have subsequently paid the arrearages shall not relieve the court of its duty under this subdivision to enter the order for the assignment.

(10) Upon a notice of motion by the obligor, the court shall

terminate an order of assignment entered pursuant to this subdivision if past due support has been paid in full and if one of the following conditions exists: (A) The employer or district attorney has been unable to deliver payments under the assignment for a period of six months due to the failure of the person to whom support has been ordered to be paid to notify the employer or district attorney of a change of address; or (B) the death or emancipation of the child to whom support is owed; or (C) the assignment has continued for 24 months after payment in full of any past due support. However, if the assignment was pursuant to a second or subsequent application, it shall not be terminated unless, upon a petition by the parent ordered to pay support, the court determines that there is good cause to terminate the assignment.

(11) The amounts withheld under this subdivision shall include both current support and payments towards the liquidation of arrearages. However, priority shall be given to the current support obligation.

(c) The Judicial Council shall prescribe forms for the orders for wage assignment required or authorized by this section. The employer may deduct from the salary or wages of the employee the sum of one dollar ($1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

(d) The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the child support obligation. The state agency or the local agency designated to enforce child support obligations, as required by federal law, shall allow employers to simplify the process of wage withholding by forwarding, as ordered by the court, the amounts of support withheld under more than one court order in a consolidated check.

(e) Orders for wage assignment required or authorized by this section shall include a requirement that the obligor notify the assigned payee of any change of employment and of the name and address of his or her new employer.

(f) No employer shall use any assignment authorized by this section as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who engages in the conduct prohibited by this subdivision may be assessed a civil penalty of a maximum of five hundred dollars ($500).

(g) As used in this section "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(h) On declaration or affidavit of the parent to whom support has been ordered to be paid to the court that: (1) the parent ordered to make support payments is in default in the payment in the amount specified in subdivision (b), and (2) the whereabouts of the defaulting parent or the identity of his or her employer are unknown

to the parent to whom support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent parent and the name and address of the absent parent's last known employer. The court shall then order the defaulting parent to make support payments pursuant to subdivision (b).

(i) Nothing in this section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives welfare moneys.

(j) This section applies to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that the money and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(k) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in Section 704.110 of the Code of Civil Procedure other than the United States government, that entity shall comply with any request for a return of employee contributions by an employee named in order by delivering the contributions to the clerk of the court from which the order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the fact to the parties, and any agency through whom payments have been ordered under Section 4702. These moneys shall be subject to any procedure available to enforce an order for child support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting obligor. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for the support of a minor child upon the issuance of such a request by such an employee.

(*l*) Notwithstanding subdivisions (a) and (b), in any case where support is ordered to be paid through the district attorney for those purposes, or upon the district attorney's or obligor's request, the court shall issue an order for a wage assignment pursuant to this section.

In any such case in which an arrearage is alleged, the party ordered to pay support may move to quash the order for wage assignment in the manner specified in subdivision (b), but a finding of error in the amount of the arrearage is not sufficient in and of itself to quash the wage assignment for that portion of the obligor's wages withheld to

pay current support.

As used in this subdivision, "wage assignment" has the same meaning as "assignment" and "wage assignment" in subdivisions (a) and (b).

(m) As used in this section, "assigned payee" means either the person to whom support has been ordered to have been paid or the district attorney, designated by the court to receive the payment. For the purposes of this section, the district attorney shall be the assigned payee for all cases in which an application for services has been filed under Title IV-D of the Social Security Act.

(n) In any case where support for a minor child is ordered to be paid through the district attorney on behalf of a minor child not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the district attorney shall forward the support received to the custodial parent or other person having care or control of the minor child or children involved within seven working days of receipt.

(o) This section shall become operative on January 1, 1987.

(p) 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. 3.5. Section 4701 of the Civil Code is amended to read:

4701. (a) (1) On and after January 1, 1987, in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court shall order either parent or both parents to assign to an assigned payee, that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child, unless the parent ordered to pay support demonstrates to the satisfaction of the court that the support payments ordered will be made. This demonstration may include proof of timely payment of previously ordered support for the minor children subject to the action. The wage assignment shall be ordered at the time of trial or entry of a judgment establishing child support, other than a temporary order pending trial. The order shall operate as an assignment and shall be binding upon any existing or future employer of the obligated parent upon whom a copy of the order is served. Any such order of assignment may be modified at any time by the court or, in the case of an arrearage, revoked as provided in subdivision (b).

(2) Notwithstanding paragraph (1), in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, the court may order either parent or both parents to assign to an assigned payee that portion of salary or wages of either parent due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. The order shall

operate as an assignment and shall be binding upon any existing or future employer of the obligated parent upon whom a copy of the order is served. Any such order may be modified or revoked at any time by the court. This paragraph shall not operate to limit the provisions of paragraph (1) but shall add to the powers set forth in that paragraph, by providing general authority for an order assigning wages or salary in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, and under any circumstance.

(b) (1) Notwithstanding the provisions of subdivision (a), in any proceeding after January 1, 1987, where the court has ordered either or both parents to pay any amount for the support of a minor child and has not otherwise ordered an assignment of wages or salary pursuant to subdivision (a), that order for support shall contain a provision assigning the wages of the obligor to the assigned payee. Any order for the modification of child support entered after January 1, 1987, which does not otherwise contain a provision for wage assignment or an order assigning wages or salary pursuant to subdivision (a), shall also contain a provision assigning the wages of an obligor to the assigned payee. All provisions for wage assignment required pursuant to this subdivision shall be effective only upon an application signed under penalty of perjury by the assigned payee that the obligor is in arrears in payment in a sum equal to the amount of support payable for one month. Upon receipt of the application, the court shall issue, without notice to the obligor, an order requiring the obligor to assign to the payee that portion of the salary or wages of the obligor due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support, maintenance, and education of the minor child. Such an order shall operate as an assignment and shall be binding upon any existing or future employer of the obligor ordered to pay support upon whom a copy of the order is served.

(2) In cases in which the order for child support does not contain a provision for wage assignment, the application shall state that the assigned payee has given the obligor a written notice of his or her intent to seek a wage assignment in the event of a default in support payments and that the notice was transmitted by certified mail or personally served at least 15 days prior to the date of the filing of the application. The written notice of intent to seek a wage assignment required by this paragraph may be given at the time of filing a petition or complaint for support or at any time subsequent thereto. In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration of notice is punishable as a contempt pursuant to Section 1209 of the Code of Civil Procedure. The obligor may at any time waive the written notice required by this subdivision.

(3) The assigned payee shall notify the employer of the obligor, by any form of mailing requiring a return receipt, of any change of address within a reasonable period of time after the change. In

instances in which payments have been ordered to be made to the district attorney, the parent to whom support has been ordered to be paid shall notify the court and the district attorney, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change. If the employer or district attorney is unable to deliver payments under the assignment for a period of six months due to the failure of the individual to whom support has been ordered to be paid to notify the employer or district attorney of a change of address, the employer or district attorney shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

(4) An assignment order made pursuant to this subdivision shall not become effective until 10 days after service of the order on an employer.

(5) Within 10 days of service of an assignment order issued pursuant to this subdivision on an employer, the employer shall deliver a copy of the assignment order to the obligor, together with a written statement of the obligor's rights under the law to move to quash the assignment. The Judicial Council shall adopt a form for the statement.

(6) An obligor alleged to be in default may move to quash an assignment order issued under this subdivision within 10 days after service on the obligor of notice of the assignment order by his or her employer if the obligor states under oath that there is an error in the amount of current or overdue support, that the alleged obligor is not the obligor from whom support is due, or that the amount to be withheld exceeds that allowable under federal law in subdivision (b) of Section 1673 of Title 15 of the United States Code, to the extent that the amount required to be withheld exceeds the limits specified in federal law. The obligor may also move to quash the assignment if he or she states under oath that a default in payment in a sum equal to the amount of support payable for one month has not occurred. The motion and notice of motion to quash the assignment order shall be filed with the court issuing the assignment order within 10 days after service on the obligor of notice of the order by the employer. The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion and shall mail to the petitioner at the return address contained in the petition a copy of the notice of motion by first-class mail within five days after receipt of the notice of motion. If a finding of an error in the amount of overdue support results in an amount due which is less than one month's support, the assignment of wages shall be quashed accordingly. However, if a finding of an error in the amount of overdue support results in an amount in excess of one month's support, such a finding in the amount of overdue support shall not affect the assignment of that portion of the obligor's wages withheld to pay for current support. A finding of an error in the amount of current support subject to withholding does not affect the assignment of that portion of the obligor's wages withheld to pay

overdue support.

(7) The employer shall continue to withhold and forward support as ordered by the court until served with notice that the motion to quash under this subdivision has been granted. The employer shall send the amounts withheld to the assigned payee within 10 days of the date the obligor is paid. An employer who willfully fails to withhold and forward support pursuant to a currently valid order entered and served upon the employer pursuant to this section is liable to the assigned payee for the amount of support not withheld, forwarded, or otherwise paid to the assigned payee. Willful failure by an employer to comply with such an order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(8) The due date of support payments under this subdivision shall be the date specifically stated in the order of support or if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.

(9) For purposes of this subdivision, arrearages of payment shall be computed on the basis of the payments owed and unpaid on the date that the obligor has been given notice of the order of assignment and the fact that the obligor may have subsequently paid the arrearages shall not relieve the court of its duty under this subdivision to enter the order for the assignment.

(10) Upon a notice of motion by the obligor, the court shall terminate an order of assignment entered pursuant to this subdivision if past due support has been paid in full and if one of the following conditions exists: (A) The employer or district attorney has been unable to deliver payments under the assignment for a period of six months due to the failure of the person to whom support has been ordered to be paid to notify the employer or district attorney of a change of address; or (B) the death or emancipation of the child to whom support is owed; or (C) the assignment has continued for 24 months after payment in full of any past due support. However, if the assignment was pursuant to a second or subsequent application, it shall not be terminated unless, upon a petition by the parent ordered to pay support, the court determines that there is good cause to terminate the assignment.

(11) The amounts withheld under this subdivision shall include both current support and payments towards the liquidation of arrearages. However, priority shall be given to the current support obligation.

(c) The Judicial Council shall prescribe forms for the orders for wage assignment required or authorized by this section. The employer may deduct from the salary or wages of the employee the sum of one dollar ($1) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

(d) The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of

enforcing the child support obligation. The state agency or the local agency designated to enforce child support obligations, as required by federal law, shall allow employers to simplify the process of wage withholding by forwarding, as ordered by the court, the amounts of support withheld under more than one court order in a consolidated check.

(e) Orders for wage assignment required or authorized by this section shall include a requirement that the obligor notify the assigned payee of any change of employment and of the name and address of his or her new employer.

(f) No employer shall use any assignment authorized by this section as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who engages in the conduct prohibited by this subdivision may be assessed a civil penalty of a maximum of five hundred dollars ($500).

(g) As used in this section "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(h) On declaration or affidavit of the parent to whom support has been ordered to be paid to the court that: (1) the parent ordered to make support payments is in default in the payment in the amount specified in subdivision (b), and (2) the whereabouts of the defaulting parent or the identity of his or her employer are unknown to the parent to whom support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent parent and the name and address of the absent parent's last known employer. The court shall then order the defaulting parent to make support payments pursuant to subdivision (b).

(i) Nothing in this section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives welfare moneys.

(j) This section applies to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that the money and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(k) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in Section 704.110 of the Code of Civil Procedure other than the United States government, that entity shall comply with any request for a return of employee contributions by an employee named in order by delivering the contributions to the clerk of the court from which the order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court,

within 10 days, shall send written notice of the fact to the parties, and any agency through whom payments have been ordered under Section 4702. These moneys shall be subject to any procedure available to enforce an order for child support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting obligor. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for the support of a minor child upon the issuance of such a request by such an employee.

(*l*) Notwithstanding subdivisions (a) and (b), in any case where support is ordered to be paid through the district attorney for those purposes, or upon the district attorney's or obligor's request, the court shall issue an order for a wage assignment pursuant to this section.

In any such case in which an arrearage is alleged, the party ordered to pay support may move to quash the order for wage assignment in the manner specified in subdivision (b), but a finding of error in the amount of the arrearage is not sufficient in and of itself to quash the wage assignment for that portion of the obligor's wages withheld to pay current support.

As used in this subdivision, "wage assignment" has the same meaning as "assignment" and "wage assignment" in subdivisions (a) and (b).

(m) As used in this section, "assigned payee" means either the person to whom support has been ordered to have been paid or the district attorney, designated by the court to receive the payment. For the purposes of this section, the district attorney shall be the assigned payee for all cases in which an application for services has been filed under Title IV-D of the Social Security Act.

(n) In any case where support for a minor child is ordered to be paid through the district attorney on behalf of a minor child not receiving public assistance pursuant to the Family Economic Security Act of 1982 (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the district attorney shall forward the support received to the custodial parent or other person having care or control of the minor child or children involved within seven working days of receipt.

(o) This section shall become operative on January 1, 1987.

(p) 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. 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.

(d) For purposes of this section "health insurance coverage" includes vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan.

SEC. 4.5. Section 4726 of the Civil Code is amended to read:

4726. (a) (1) 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 reasonable cost to the parent or parents. In cases in which the court determines that health insurance coverage is not available at no or reasonable 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 reasonable cost. Upon health insurance coverage at no or reasonable cost becoming available to the parent or parents, the parent or parents shall apply for that coverage.

(2) The court shall generally consider health insurance coverage to be reasonable in cost if it is employment-related group health insurance or other group health insurance, regardless of the service delivery mechanism. If the court determines that the cost of health insurance coverage is not reasonable, the court shall state its reasons on the record.

(3) As used in this section "health insurance coverage" includes vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan. "Health insurance coverage" also includes provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to the dependent child or children of an absent parent.

(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 and obtaining 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) In those cases where the district attorney is providing medical support enforcement services, the district attorney shall provide the parent or person having custody of the child or children with information pertaining to the health insurance policy which has been secured for that child or children.

(d) 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. 5. Section 4726.1 of the Civil Code is amended to read:

4726.1. (a) Upon application by a party in any proceeding where the court has ordered either or both parents to maintain health insurance under Section 4726, the court may order the employer of the obligor parent or other person providing health insurance to the obligor, to enroll the supported child in the health insurance plan available to the obligor through the employer or other person and to deduct the appropriate premium or costs, if any, from the wages or earnings of the obligor. The order shall be called a health insurance coverage assignment.

(b) The health insurance coverage assignment may be ordered at the time of trial or entry of a judgment ordering health insurance coverage. The order shall operate as an assignment and shall be binding upon any existing or future employer of the obligated parent upon whom a copy of the order has been served. Any such order of assignment may be modified at any time by the court.

(c) The application shall state that the party seeking the assignment has given the obligor a written notice of his or her intent to seek a health insurance coverage assignment in the event of a default in instituting coverage required by court order on behalf of the parties' child and that the notice was transmitted by certified mail or personally served at least 15 days prior to the date of the filing of the application. The written notice of intent to seek an assignment required by this paragraph may be given at the time of filing a petition or complaint for support or at any time subsequent thereto. The obligor may at any time waive the written notice required by this subdivision.

(d) An order made pursuant to this section shall not become effective until 10 days after service by the applicant of the order on the employer or other person providing health insurance to the obligor. Within 10 days after service of the order, the employer or other person providing health insurance to the obligor shall deliver

a copy of the order to the obligor, together with a written statement of the obligor's rights under the law to move to quash the order.

(e) An obligor alleged to be in default may move to quash a health insurance coverage assignment order issued under this subdivision within 10 days after service on the obligor of the assignment order by his or her employer or other person providing health insurance coverage if the obligor declares under penalty of perjury that there is an error in that (1) no order to maintain health insurance has been issued under Section 4726; (2) the amount to be withheld for premiums is greater than that permissible under Section 4726 or greater than the amount otherwise ordered by the court; (3) the amount of the increased premium is unreasonable; (4) the alleged obligor is not the obligor from whom health insurance coverage is due; (5) the child or children are or will be otherwise provided health care coverage; or (6) the employer's choice of coverage is inappropriate. The motion and notice of motion to quash the assignment order shall be filed with the court issuing the assignment order within 10 days after service on the obligor of notice of the order by the employer or other person providing health insurance coverage. The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion; and within five days after receipt of the notice of motion shall deliver a copy of the notice of motion to the district attorney, personally or by first-class mail, and the applicant and the employer or other person providing health insurance, at the appropriate addresses contained in the application by first-class mail. Upon a finding of error, as described above, the court shall quash the assignment.

(f) The employer, or other person providing health insurance, shall take steps to commence coverage, consistent with the order for the health insurance coverage assignment, 10 days after service of the order upon the obligor pursuant to subdivision (d) if the employer or other person providing health insurance has not received a notice of motion seeking to quash the order. If the employer or other person providing health insurance receives a notice of motion to quash, the employer shall commence coverage consistent with the assignment order upon receipt of the order resolving the motion to quash in favor of the applicant. The employer, or the person providing health insurance, shall commence coverage at the earliest possible time and, if applicable, consistent with the group plan enrollment rules. If the obligor has made a selection of health coverage inconsistent with the court order, the selection shall not be superseded unless the child or children to be enrolled in the plan will not be provided benefits or coverage where the child or children reside.

If the obligor has not enrolled in an available health plan, there is a choice of coverage, and the court has not ordered coverage by a specific plan, the employer shall enroll the child or children in the plan that will reasonably provide benefits or coverage where the

child or children reside. If that coverage is not available, the employer or other person providing health insurance shall, within 20 days, return the assignment to the attorney or person initiating the assignment.

(g) An employer or other person providing health insurance who willfully fails to comply with a valid assignment order entered and served upon the employer or other person pursuant to this section shall be liable to the applicant for the amount incurred in health care services which would otherwise have been covered under the insurance policy but for the conduct of the employer or other person providing health insurance which was contrary to the order of assignment under this section. Willful failure of an employer or other person providing health insurance to comply with an order for assignment under this section is punishable as contempt of court pursuant to Section 1218 of the Code of Civil Procedure.

(h) The employer or other person providing health insurance shall be responsible for providing evidence of coverage to both parents or the person having custody of the child and, upon request by the parents or person having custody of the child, for providing all forms and other documentation necessary for the purpose of submitting claims to the insurance carrier which the employer or other person providing health insurance usually provides to insureds.

(i) The employer or other person providing health insurance shall notify the applicant of the order for assignment of the commencement date of the coverage of the children.

(j) If an assignment pursuant to this section is served on an employer or other person providing health insurance and no such coverage is available for the supported child, the employer or other person shall, within 20 days, return the assignment order to the attorney, or person initiating the assignment.

(k) Upon a notice of motion by the obligor, the court shall terminate an order of assignment entered pursuant to this section if one of the following conditions exists: (1) a new order has been issued under Section 4726, which is inconsistent with the existing health insurance coverage assignment; (2) the employer or other person providing health insurance has discontinued that coverage to the obligor; (3) the court determines that there is good cause to terminate the assignment; or (4) the death or emancipation of the child for whom the health insurance has been obtained.

(*l*) No employer shall use any assignment authorized by this section as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who violates this subdivision may be assessed a civil penalty of a maximum of five hundred dollars ($500).

(m) As used in this section "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(n) The Judicial Council shall adopt forms for the orders for health insurance coverage assignment required or authorized by this

section, including, but not limited to, the application, the order, and the statement of the obligor's rights. The parties and child shall be sufficiently identified on the forms by the inclusion of birth dates, social security numbers, and any other information deemed necessary by the Judicial Council.

(o) For purposes of this section "health insurance," "health insurance plan," "health insurance coverage," "health care services," or "health insurance coverage assignment" includes vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan.

SEC. 6. Section 4801.1 of the Civil Code is amended to read:

4801.1. (a) The purpose of this section is to permit inexpensive discovery of facts prior to the institution of an action for the modification of an order for spousal support.

(b) At any time following a judgment of dissolution of marriage or legal separation that provides for payment of spousal support, either the party ordered to pay support or the party to whom support was ordered to be paid or that party's assignee, without leave of court, may serve a request for the production of a completed current income and expense declaration in the form adopted by the Judicial Council.

Methods of discovery other than that described in this subdivision may only be employed if a motion for modification of support is pending. In the absence of a pending motion for modification of support, a request for discovery pursuant to this section may be undertaken no more than once a year. This section may be enforced under Sections 1991, 1991.1, 1991.2, and 1993 of the Code of Civil Procedure and in the Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure), and any other statutes applicable to the enforcement of procedures for discovery. The Judicial Council shall adopt forms which shall be used in the procedures provided by this section.

(c) A copy of the prior year's federal and state personal income tax returns shall be attached to the income and expense declaration of each party. A party shall not disclose the contents nor provide copies of the other party's tax returns to anyone except to the court, his or her attorney, his or her accountant, or other financial consultant assisting with matters relating to the proceeding, or any other person as permitted by the court. The tax returns shall be controlled by the court as provided in Section 4700.7.

(d) Service of a request for production of an income and expense declaration 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.

(e) Upon the subsequent filing of a motion for modification of spousal support by the requesting party, if the court finds that the income and expense declaration submitted by the responding party

pursuant to this section was incomplete, inaccurate, missing the prior year's federal and state personal income tax returns, or that the declaration was not submitted in good faith, the court may order sanctions against the responding party in the form of payment of all costs of the motion, including the filing fee and the costs of depositions and subpoenas necessary to be utilized in order to obtain complete and accurate information.

SEC. 7. Section 4801.6 of the Civil Code is amended to read:

4801.6. (a) In any proceeding where the court has ordered a party to pay any amount of spousal support to the other party, the court, may order the party required to make a payment of spousal support to assign to an assigned payee that portion of his or her salary or wages due or to be due in the future as will be sufficient to pay the amount ordered by the court for spousal support. The order shall operate as an assignment and shall be binding upon any existing or future employer of the party required to make the payment of spousal support upon whom a copy of the order is served. Any such order may be modified or revoked at any time by the court.

(b) (1) Notwithstanding subdivision (a), in any proceeding after January 1, 1989, where the court has ordered a party to pay any amount of spousal support to the other party, that order shall contain a provision assigning the wages of the obligor to the assigned payee. Any order for the modification of support entered after January 1, 1989, which does not otherwise contain a provision for wage assignment, shall also contain a provision assigning the wages of an obligor to the assigned payee. All provisions for wage assignment required pursuant to this subdivision shall be effective only upon an application signed under penalty of perjury by the assigned payee that the obligor is in arrears in payment in a sum equal to the amount of support payable for one month. Upon receipt of the application, the court shall issue, without notice to the obligor, an order requiring the obligor to assign to the payee that portion of the salary or wages of the obligor due or to be due in the future as will be sufficient to pay the amount ordered by the court for spousal support. The order shall operate as an assignment and shall be binding upon any existing or future employer of the obligor ordered to pay support upon whom a copy of the order is served.

(2) In cases in which the order for support does not contain a provision for wage assignment, the application shall state that the assigned payee has given the obligor a written notice of his or her intent to seek a wage assignment in the event of a default in support payments and that the notice was transmitted by certified mail or personally served at least 15 days prior to the date of the filing of the application. The written notice of intent to seek a wage assignment required by this paragraph may be given at the time of filing a petition or complaint for support or at any time subsequent thereto. In addition to any other penalty provided by law, the filing of the application with knowledge of the falsity of the declaration of notice is punishable as a contempt pursuant to Section 1209 of the Code of

Civil Procedure. The obligor may at any time waive the written notice required by this subdivision.

(3) The assigned payee shall notify the employer of the obligor, by any form of mailing requiring a return receipt, of any change of address within a reasonable period of time after the change. In instances in which payments have been ordered to be made to the district attorney, the party to whom support has been ordered to be paid shall notify the court and the district attorney, by any form of mail requiring a return receipt, of any address change within a reasonable period of time after any such change. If the employer or district attorney is unable to deliver payments under the assignment for a period of six months due to the failure of the individual to whom support has been ordered to be paid to notify the employer or district attorney of a change of address, the employer or district attorney shall not make any further payments under the assignment and shall return all undeliverable payments to the employee.

(4) An assignment order made pursuant to this subdivision shall not become effective until 10 days after service of the order on an employer.

(5) Within 10 days of service of an assignment order issued pursuant to this subdivision on an employer, the employer shall deliver a copy of the assignment order to the obligor, together with a written statement of the obligor's rights under the law to move to quash the assignment. The Judicial Council shall adopt a form for the statement.

(6) An obligor alleged to be in default may move to quash an assignment order issued under this subdivision within 10 days after service on the obligor of notice of the assignment order by his or her employer if the obligor states under oath that there is an error in the amount of current or overdue support, that the alleged obligor is not the obligor from whom support is due, or that the amount to be withheld exceeds that allowable under federal law in subdivision (b) of Section 1673 of Title 15 of the United States Code, to the extent that the amount required to be withheld exceeds the limits specified in federal law. The obligor may also move to quash the assignment if he or she states under oath that a default in payment in a sum equal to the amount of support payable for one month has not occurred. The motion and notice of motion to quash the assignment order shall be filed with the court issuing the assignment order within 10 days after service on the obligor of notice of the order by the employer. The clerk of the court shall set the motion to quash for hearing within not less than 15 days, nor more than 20 days, after receipt of the notice of motion and shall mail to the petitioner at the return address contained in the petition a copy of the notice of motion by first-class mail within five days after receipt of the notice of motion. If a finding of an error in the amount of overdue support results in an amount due which is less than one month's support, the assignment of wages shall be quashed accordingly. However, if a finding of an error in the amount of overdue support results in an amount in excess of one

month's support, such a finding in the amount of overdue support shall not affect the assignment of that portion of the obligor's wages withheld to pay for current support. A finding of an error in the amount of current support subject to withholding does not affect the assignment of that portion of the obligor's wages withheld to pay overdue support.

(7) The employer shall continue to withhold and forward support as ordered by the court until served with notice that the motion to quash under this subdivision has been granted. The employer shall send the amounts withheld to the assigned payee within 10 days of the date the obligor is paid. An employer who willfully fails to withhold and forward support pursuant to a currently valid order entered and served upon the employer pursuant to this section is liable to the assigned payee for the amount of support not withheld, forwarded, or otherwise paid to the assigned payee. Willful failure by an employer to comply with such an order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(8) The due date of support payments under this subdivision shall be the date specifically stated in the order of support or if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.

(9) For purposes of this subdivision, arrearages of payment shall be computed on the basis of the payments owed and unpaid on the date that the obligor has been given notice of the order of assignment and the fact that the obligor may have subsequently paid the arrearages shall not relieve the court of its duty under this subdivision to enter the order for the assignment.

(10) Upon a notice of motion by the obligor, the court shall terminate an order of assignment entered pursuant to this subdivision if past due support has been paid in full and if one of the following conditions exists: (A) The employer or district attorney has been unable to deliver payments under the assignment for a period of six months due to the failure of the person to whom spousal support has been ordered to be paid to notify the employer or district attorney of a change of address; or (B) the death or remarriage of the spouse to whom support is owed; or (C) the assignment has continued for 24 months after payment in full of any past due support. However, if the assignment was pursuant to a second or subsequent application, it shall not be terminated unless, upon a petition by the party ordered to pay support, the court determines that there is good cause to terminate the assignment.

(11) The amounts withheld under this subdivision shall include both current support and payments towards the liquidation of arrearages. However, priority shall be given to the current support obligation.

(c) The Judicial Council shall prescribe forms for the orders for wage assignment required or authorized by this section. The employer may deduct from the salary or wages of the employee the sum of one dollar ($1) for each payment made pursuant to the order.

Any such assignment made pursuant to court order shall have priority as against any attachment, execution, or other assignment, unless otherwise ordered by the court.

(d) The employer shall cooperate with and provide relevant employment information to the district attorney for the purpose of enforcing the support obligation. The state agency or the local agency designated to enforce child and spousal support obligations, as required by federal law shall allow employers to simplify the process of wage withholding by forwarding, as ordered by the court, the amounts of support withheld under more than one court order in a consolidated check.

(e) Orders for wage assignment required or authorized by this section shall include a requirement that the obligor notify the assigned payee of any change of employment and of the name and address of his or her new employer.

(f) No employer shall use any assignment authorized by this section as grounds for refusing to hire a person or for discharging or taking disciplinary action against an employee. An employer who engages in the conduct prohibited by this subdivision may be assessed a civil penalty of a maximum of five hundred dollars ($500).

(g) As used in this section "employer" includes the United States government and any public entity as defined in Section 811.2 of the Government Code.

(h) On declaration or affidavit of the party to whom spousal support has been ordered to be paid to the court that: (1) the party ordered to make support payments is in default in the payment in the amount specified in subdivision (b), and (2) the whereabouts of the defaulting party or the identity of his or her employer are unknown to the party to whom support has been ordered to be paid, the district attorney shall contact the central registry maintained by the Department of Justice in the manner prescribed in Section 11478.5 of the Welfare and Institutions Code, and upon receiving the requested information, notify the court of the last known address of the absent party and the name and address of the absent party's last known employer. The court shall then order the defaulting party to make support payments pursuant to subdivision (b).

(i) Nothing in this section shall limit the authority of the district attorney to utilize any and all civil and criminal remedies to enforce spousal support obligations.

(j) This section applies to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that the money and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(k) Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in Section 704.110 of the Code of Civil Procedure other than the United States government, that entity shall comply with any request for a return of employee contributions by an employee

named in order by delivering the contributions to the clerk of the court from which the order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the fact to the parties, and any agency through whom payments have been ordered under Section 4801.7. These moneys shall be subject to any procedure available to enforce an order for spousal support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting obligor. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for spousal support upon the issuance of such a request by such an employee.

(*l*) Notwithstanding subdivisions (a) and (b), in any case where support is ordered to be paid through the district attorney for those purposes, or upon the district attorney's or obligor's request, the court shall issue an order for a wage assignment pursuant to this section.

In any such case in which an arrearage is alleged, the party ordered to pay support may move to quash the order for wage assignment in the manner specified in subdivision (b), but a finding of error in the amount of the arrearage is not sufficient in and of itself to quash the wage assignment for that portion of the obligor's wages withheld to pay current support.

As used in this subdivision, "wage assignment" has the same meaning as "assignment" and "wage assignment" in subdivisions (a) and (b).

(m) As used in this section, "assigned payee" means either the person to whom support has been ordered to have been paid or the district attorney so long as the district attorney is otherwise required under existing law to enforce that support and is designated by the court to receive the payment. For the purposes of this section, the district attorney shall be the assigned payee for all cases in which an application for services has been filed under Title IV-D of the Social Security Act, so long as otherwise authorized by law.

(n) The procedures specified in this section are applicable to any proceeding where the court has ordered a party to pay any amount for family support.

(o) Any reference to the district attorney in this section shall apply only when the district attorney is otherwise ordered or required to act pursuant to existing law. Nothing in this section shall be deemed to mandate additional enforcement or collection duties upon the district attorney beyond those imposed under existing law.

(p) 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. 8. Section 704.114 is added to the Code of Civil Procedure, to read:

704.114. Notwithstanding any other provision of law, when a certified copy of any order of assignment is served on any public entity described in Section 704.110 other than the United States government, that entity shall comply with any request for a return of employee contributions by an employee named in the order by delivering the contributions to the clerk of the court from which the order issued, unless the entity has received a certified copy of an order terminating the order of assignment. Upon receipt of moneys pursuant to this section, the clerk of the court, within 10 days, shall send written notice of the fact to the parties, and any agency through whom payments have been ordered under Section 4702 or 4801.7 of the Civil Code. These moneys shall be subject to any procedure available to enforce an order for support, but if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk shall, upon request, return the moneys to the public entity that delivered the moneys to the court unless the public entity has informed the court in writing that the moneys shall be released to the defaulting employee or his or her heirs. A court shall not directly or indirectly condition the issuance, modification, or termination of, or condition the terms or conditions of, any order for support upon the issuance of such a request by such an employee.

SEC. 9. Section 708.730 of the Code of Civil Procedure is amended to read:

708.730. (a) If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by this article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

(b) Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail.

(c) If the judgment is for support and related costs and money is owing and unpaid to the judgment debtor by a state agency, including, but not limited to, money owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, and the district attorney is enforcing the support

obligation pursuant to Section 11475.1 of the Welfare and Institutions Code, the claim may be submitted as follows: The district attorney may file the affidavit referred to in subdivision (a) without filing an abstract or certified copy of the judgment. In lieu thereof, the affidavit shall also state that an abstract of the judgment could be obtained. Where there is more than one judgment debtor, the district attorney may include all the judgment debtors in a single affidavit. Separate affidavits need not be submitted for each judgment debtor. The affidavit need not on its face separately identify each judgment debtor or the exact amount required to satisfy the judgment, so long as it incorporates by reference forms or other automated data transmittals, as required by the State Department of Social Services, which contain this information. Affidavits submitted pursuant to this subdivision by the district attorney shall meet the standards and procedures prescribed by the state agency to which the affidavit is submitted, except that those affidavits submitted with respect to moneys owed and unpaid to the judgment debtor as a result of a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporations Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, shall meet the standards and procedures prescribed by the Franchise Tax Board.

In serving the notice required by subdivision (b), the Director of the State Department of Social Services or his or her designee may act in lieu of the judgment creditor as to judgments enforced under this division.

(d) If the judgment is for child, spousal, or family support and related costs and money is owing and unpaid to the judgment debtor by a state agency on a claim for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, or as a result of the judgment debtor's winnings in the California State Lottery, the judgment creditor may file with the court an abstract or a certified copy of the judgment or decree ordering the payment of child, spousal, or family support, together with a request that the court issue a Notice of Support Arrearage, as provided in Section 708.780, to which any personal income tax refunds and lottery winnings owed the judgment debtor by the State of California will be subject. The request shall be accompanied by an affidavit which shall state that the judgment creditor desires the relief provided by this subdivision and shall state the exact amount then required to satisfy the judgment or decree. In addition, the affidavit shall specify the beginning and ending dates of all periods during which the arrearage for support occurred, specify the arrearage for each month, and state that each specified arrearage has been delinquent

for at least 30 days. It shall also certify that the child or children are not recipients, and during the period for which payment is requested, were not recipients, of Aid to Families with Dependent Children and there was no assignment to a state or county agency of support and shall certify on information and belief that there is not current or past action by a district attorney pending for support or support enforcement on the judgment creditor's behalf.

The request shall have attached a proof of service showing that copies of the request, the affidavit, and the abstract or certified copy of the judgment or decree ordering the payment of support have been served on the judgment debtor and the district attorney of the county in which the support judgment is entered. Service 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.

This subdivision does not apply in any instance in which a district attorney initiated or participated as counsel in the action for support or if support is required to be paid through a district attorney's office.

This subdivision shall be operative only until January 1, 1994.

(e) For purposes of this section, "support" means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

SEC. 9.3. Section 708.740 of the Code of Civil Procedure is amended to read:

708.740. (a) Except as provided in subdivision (e), if money is owing and unpaid to the judgment debtor by a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state agency owing the money to the judgment debtor prior to the time the state agency presents the claim of the judgment debtor to the Controller. Where the affidavit is prepared under subdivision (c) of Section 708.730, the affidavit shall be filed with the State Department of Social Services, and no abstract need be filed. Filing of the affidavit with the department shall be sufficient to require the Controller to transfer the funds claimed by the judgment debtor, notwithstanding that the claim of the judgment debtor has been filed with another state agency.

(b) When presenting the claim of the judgment debtor to the Controller, the state agency shall do all of the following:

(1) Note the fact of the filing of the abstract or certified copy of the judgment and the affidavit.

(2) State the amount required to satisfy the judgment as shown by the affidavit.

(3) State any amounts advanced to the judgment debtor by the state, or owed by the judgment debtor to the state, for expenses or for any other purpose.

(c) Except as provided in subdivisions (d) and (e), to discharge the claim of the judgment debtor, the Controller shall (1) deposit with the court, by a warrant or check payable to the court, the amount due the judgment debtor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the

judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent and (2) pay the balance thereof, if any, to the judgment debtor.

(d) Where an affidavit stating the existence of a judgment for support has been submitted to the State Department of Social Services, pursuant to subdivision (c) of Section 708.730, to discharge the claim of a judgment debtor, the Controller shall direct payment to the county agency designated by the district attorney in his or her affidavit.

(e) Where the judgment is for support and the money owed is for lottery winnings or a refund of overpayment of tax, penalty, interest, or interest allowable with respect to an overpayment under Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, and the support obligation is not being enforced pursuant to Section 11475.1 of the Welfare and Institutions Code, the judgment creditor may file the abstract or certified copy of the judgment with the district attorney of the county in which the support judgment is entered or registered. The district attorney shall then file the claim of the judgment creditor pursuant to subdivision (c) of Section 708.730. When funds are received by the district attorney he or she shall discharge any claim of the judgment debtor by forwarding those sums to the clerk of the court pursuant to subdivision (c) of this section. Any and all notices otherwise required of a judgment creditor or the clerk of the court, and any litigation to enforce rights under this subdivision shall be the responsibility of the judgment creditor, the same as if service had been directly on the Controller without the intervention of the district attorney.

(f) Where the claim of the judgment debtor is less than ten dollars ($10) and the claim of the judgment creditor arises under an affidavit filed pursuant to subdivision (c) of Section 708.730, the Controller may disregard the claim of the judgment creditor and forward any and all sums due to the judgment debtor. In the event that there is more than one claimant for a refund, the Franchise Tax Board shall have discretion in allocating the overpayment among claimants.

(g) Should two or more district attorneys submit claims on behalf of a judgment creditor, the Controller in his or her discretion may select which claim or claims he or she shall honor.

(h) Any claims which are honored in behalf of a judgment creditor shall be considered as refunds of tax overpayments to the judgment debtor.

(i) For purposes of this section, "support" means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

SEC. 9.5. Section 708.780 of the Code of Civil Procedure is amended to read:

708.780. (a) Filing of the abstract or certified copy of the judgment and the affidavit pursuant to this article creates a lien on the money owing and unpaid to the judgment debtor by the public entity in an amount equal to that which may properly be applied to

the satisfaction of the money judgment under this article.

(b) When an affidavit is filed pursuant to subdivision (c) of Section 708.730, it shall apply to all claims for refund from the Franchise Tax Board under the Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code, which the judgment debtor subsequently claims during a period one year after filing of the affidavit, or October 1 of the year following the filing of the affidavit, whichever occurs later, the same as if claims for these overpayments were filed by the judgment debtor with the appropriate state agency on the date the affidavit was filed.

(c) When a request is filed pursuant to subdivision (d) of Section 708.730 with the court, and upon order of the court, the clerk of the court shall issue a Notice of Support Arrearage. The court shall order the clerk of the court to issue the notice 30 days after the request was filed pursuant to subdivision (d) of Section 708.730 without a hearing if no objection has been raised by the judgment debtor pursuant to this subdivision. If an objection has been raised, the notice shall not be ordered until after a hearing. The notice shall contain the name of the person ordered to pay support and his or her social security number; the amount of the arrearage determined by the court; whether the arrearage is for child, spousal, or family support and the specific combination thereof; a statement of how the recipient may challenge the statement of arrearage; and the name, address, and social security number of the person to whom the arrearage is owed. Upon the clerk of the court issuing the Notice of Support Arrearage, a copy of the request, the affidavit, and the notice shall be served by the party who requested the court to issue the Notice of Support Arrearage upon the person ordered to pay support and the Controller. Service may be personal, in accordance with Section 1011, or by mail, in accordance with Section 1013. Service upon the Controller shall be at the Controller's office in Sacramento.

The judgment debtor may object to the request or affidavit upon any of the following grounds: (1) there is an error in the amount of the arrearage stated in the affidavit; (2) the alleged judgment debtor is not the judgment debtor from whom the support is due; (3) the amount to be intercepted exceeds that allowable under federal law; (4) a default in payment of the support for 30 days has not occurred; or (5) other necessary factual allegations contained in the affidavit are erroneous.

Upon receipt of the Notice of Support Arrearage, the Controller shall take reasonable measures to deduct from any personal income tax refunds and lottery winnings owed and processed for payment to the judgment debtor and deposit with the court a warrant, subject to Sections 708.770 and 708.775, with service of a copy of the warrant upon the district attorney of the county in which the support judgment is entered, payable to the court, the amount due the

judgment creditor (after deducting an amount sufficient to reimburse the state for any amounts advanced to the judgment debtor or owed by the judgment debtor to the state) required to satisfy the money judgment as shown by the affidavit in full or to the greatest extent, and pay the balance thereof, if any, to the judgment debtor. At any hearing pursuant to Section 708.770, the judgment debtor may challenge the distribution of these funds on exemption or other grounds, including, but not limited to, an allegation that the judgment has been satisfied or that service was improper. The notice shall not apply to any money which is exempt by law from execution. The Controller shall determine the cost of enforcing the notice and may establish a notice filing fee not to exceed five dollars ($5).

Service of the Notice of Support Arrearage and of the request and affidavit pursuant to this subdivision creates a lien on the money owing and unpaid to the judgment debtor which shall become effective 30 days following service upon the Controller. This notice shall remain in effect for four years from the date of its issuance or until the arrearage for which the notice was issued is satisfied, whichever occurs first.

Any person who files a request with the court to issue a Notice of Support Arrearage pursuant to subdivision (d) of Section 708.730 shall notify the court and the Controller of any satisfaction of the arrearage after the Notice of Support Arrearage has been issued by the clerk of the court. The notice to the court and the Controller shall be filed with the court and the Controller and served upon the district attorney of the county in which the support judgment is entered within 30 days of the satisfaction or discharge and shall show a partial or full satisfaction of the arrearage or any other resolution of the arrearage.

Upon filing and service, the Notice of Support Arrearage shall be of no force and effect.

This subdivision shall be operative only until January 1, 1994.

(d) For purposes of this section, "support" means an obligation owing on behalf of a child, spouse, or family, or combination thereof.

SEC. 9.7. Section 972 of the Evidence Code is amended to read:

972. A married person does not have a privilege under this article in:

(a) A proceeding brought by or on behalf of one spouse against the other spouse.

(b) A proceeding to commit or otherwise place his or her spouse or his or her spouse's property, or both, under the control of another because of the spouse's alleged mental or physical condition.

(c) A proceeding brought by or on behalf of a spouse to establish his or her competence.

(d) A proceeding under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(e) A criminal proceeding in which one spouse is charged with:

(1) A crime against the person or property of the other spouse or

of a child, parent, relative, or cohabitant of either, whether committed before or during marriage.

(2) A crime against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse, whether committed before or during marriage.

(3) Bigamy

(4) A crime defined by Section 270 or 270a of the Penal Code.

(f) A proceeding resulting from a criminal act which occurred prior to legal marriage of the spouses to each other regarding knowledge acquired prior to that marriage if prior to the legal marriage the witness spouse was aware that his or her spouse had been arrested for or had been formally charged with the crime or crimes about which the spouse is called to testify.

(g) A proceeding brought against the spouse by a former spouse so long as the property and debts of the marriage have not been adjudicated, or in order to establish, modify, or enforce a child, family or spousal support obligation arising from the marriage to the former spouse; in a proceeding brought against a spouse by the other parent in order to establish, modify, or enforce a child support obligation for a child of a nonmarital relationship of the spouse; or in a proceeding brought against a spouse by the guardian of a child of that spouse in order to establish, modify, or enforce a child support obligation of the spouse. The married person does not have a privilege under this subdivision to refuse to provide information relating to the issues of income, expenses, assets, debts, and employment of either spouse, but may assert the privilege as otherwise provided in this article if other information is requested by the former spouse, guardian, or other parent of the child.

Any person demanding the otherwise privileged information made available by this subdivision, who also has an obligation to support the child for whom an order to estabish, modify, or enforce child support is sought, waives his or her marital privilege to the same extent as the spouse as provided in this subdivision.

SEC. 10. Section 1151.5 of the Government Code is amended to read:

1151.5. (a) In addition to deductions authorized pursuant to Section 1151, a state employee may authorize deductions to be made from salaries or wages for payment for the support, maintenance, or care of the employee's child, children, family, or former spouse for whom the employee has a duty of support. A service charge may be assessed for this deduction.

(b) This section shall become operative on July 1, 1989, and shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1994, deletes or extends that date.

SEC. 11. Section 12419.3 of the Government Code, as amended by Chapter 1017 of the Statutes of 1988, is amended to read:

12419.3. (a) The Controller shall offset delinquent accounts

against personal income tax refunds which have been certified by the Franchise Tax Board, in the following priority:

(1) The nonpayment of child or family support accounts enforced by a district attorney.

(2) The nonpayment of child or family support accounts enforced by someone other than a district attorney.

(3) The nonpayment of spousal support accounts enforced by a district attorney.

(4) The nonpayment of spousal support accounts enforced by someone other than a district attorney.

(5) The benefit overpayment accounts administered by the Employment Development Department if no signed reimbursement agreement exists, or if two consecutive payments on a reimbursement agreement are delinquent as of September 30 of the taxable year.

(6) The other offset accounts in the priority determined by the Controller.

(b) The Controller, the Franchise Tax Board, and the department shall annually report to the Assembly Committees on Finance and Insurance and Revenue and Taxation and the Senate Committees on Industrial Relations and Revenue and Taxation on the progress of offsets in reducing outstanding benefit overpayment accounts, and the programs for multiple offsets with adjustable priorities and cross-matching capabilities.

The first report shall be submitted prior to July 1, 1985, covering the 1984 taxable year and annually thereafter on July 1 covering the previous taxable year. The last report shall be due on July 1, 1989.

SEC. 12. 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 establishing, modifying, and enforcing child support obligations, enforcing spousal support orders established by a court of competent jurisdiction, 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 establish, modify, and enforce child support and when appropriate enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, to take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) 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. The district attorney's 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.

(c) 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.

(d) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are 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 the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(e) In any action to establish a child support order 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 subdivision (b), "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 referees 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.

(f) 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, (2) the obtaining by the district attorney of an initial order for child support, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, without regard to whether the child is receiving public assistance, and (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(g) 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.

(h) 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 of support pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code.

Nothing in this section shall limit the authority of the district

attorney granted by other sections of this code or otherwise granted by law.

(i) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), the Uniform Parentage Act (Part 7 (commencing with Section 7000) of Division 4 of the Civil Code), or other proceeding wherein child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request such relief as appropriate which the district attorney is authorized to seek.

SEC. 12.5. 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 establishing, modifying, and enforcing child support obligations, enforcing spousal support orders established by a court of competent jurisdiction, 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 establish, modify, and enforce child support and when appropriate enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, to take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) 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. The district attorney's 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.

(c) 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.

(d) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are 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 the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(e) In any action to establish a child support order 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 subdivision (b), "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 referees 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.

(f) 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, (2) the obtaining by the district attorney of an initial order for child support, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, without regard to whether the child is receiving public assistance, and (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(g) 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.

(h) 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 of support pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law.

(i) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code), the Uniform Parentage Act (Part 7 (commencing with Section 7000) of Division 4 of the Civil Code), or other proceeding wherein child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request such relief as appropriate which the district attorney is authorized to seek.

(j) The district attorney shall comply with any guidelines

established by the State Department of Social Services which guidelines set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

SEC. 13. Section 11484 of the Welfare and Institutions Code is repealed.

SEC. 14. Section 1 of this act shall be operative July 1, 1990.

SEC. 15. Section 3.5 of this bill incorporates amendments to Section 4701 of the Civil Code proposed by both this bill and SB 1121. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 4701 of the Civil Code, and (3) this bill is enacted after SB 1121, in which case Section 3 of this bill shall not become operative.

SEC. 16. Section 4.5 of this bill incorporates amendments to Section 4726 of the Civil Code proposed by this bill and SB 1380. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 4726 of the Civil Code, and (3) this bill is enacted after SB 1380, in which case Section 4 of this bill shall not become operative.

SEC. 17. Section 12.5 of this bill incorporates amendments to Section 11475.1 of the Welfare and Institutions Code proposed by this bill and SB 1380. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 11475.1 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1380, in which case Section 12 of this bill shall not become operative.

SEC. 18. 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 mandates only costs mandated by a federal law or regulation.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1360

An act to amend Sections 326, 1206, 9797, 9998.2, 10177, 10471.1, 17577.1, 24045.5 of, to amend and renumber Section 4383 of, and to amend and renumber the heading of Article 5.5 (commencing with Section 4130) of Chapter 9 of Division 2 of, the Business and Professions Code, to amend Section 1949 of the Civil Code, to amend Section 2025 of, and to repeal the heading of Article 1 (commencing with former Section 600) of Chapter 4 of Title 8 of Part 2 of, the Code of Civil Procedure, to amend Section 1203 of, and to repeal Section 204.5 of, the Corporations Code, to amend Sections 33324, 37223, 41020.5, 44200, 44868, 46202, 69562, and 76170 of, to add the heading Article 2 (commencing with Section 82321) to Chapter 7 of Part 49 of, to amend and renumber Sections 51551 and 87001 of, to repeal Sections 5011, 44680.08, and 84773 of, to repeal the headings of Article 16 (commencing with former Section 1930) of Chapter 6 of Part 2, Article 2 (commencing with former Section 10010) of Chapter 1 of Part 7, Chapter 10 (commencing with former Section 19800) of Part 11, Article 14 (commencing with former Section 35340) of Chapter 2 of Part 21, Article 3 (commencing with former Section 48020) of Chapter 1 of Part 27, Article 5 (commencing with former Section 48040) of Chapter 1 of Part 27, Article 1 (commencing with former Section 51700) of Chapter 5 of Part 28, and Article 2 (commencing with former Section 51710) of Chapter 5 of Part 28, and Article 3 (commencing with former Section 54030) of Chapter 1 of Part 29 of, and to repeal Article 8 (commencing with Section 56771) of Chapter 7 of Part 30 and Part 40.5 (commencing with Section 67175) of, the Education Code, to amend Section 23512.2 of the Elections Code, to amend Section 1364 of the Financial Code, to amend Sections 1002 and 8150.8 of, and to amend and renumber Section 12002.5 of, the Fish and Game Code, to amend Section 69051 of the Food and Agricultural Code, to amend Sections 11126 and 15379.3 of, to amend and renumber Sections 421.5, 12528, and 21209 of, to amend and renumber Article 4 (commencing with Section 9220) of Chapter 2 of Part 1 of Division 2 of Title 2 of, to repeal Sections 831.21, 11511.5, 12480, 13965.1, 13969.2, 17313.5, 74782.1, and 77400.1 of, to repeal Chapter 6 (commencing with Section 962) of Part 4 of Division 3.6 of Title 1 of, Chapter 3.7 (commencing with Section 984) of Part 5 of Division 3.6 of Title 1 of, Article 12 (commencing with Section 53590) of Chapter 3 of Part 1 of Division 2 of Title 5 of, and Article 35.5 (commencing with Section 74915) of Chapter 10 of Title 8 of, and to repeal the heading of Article 3 (commencing with former Section 22310) of Chapter 2 of Part 4 of Division 5 of Title 2 of, the Government Code, to amend Sections 199.715, 1343, 1502, 1502.5, 1596.865, 1596.95, 1599.78, 1770, 11489, 11573.5, 13812, 18916, 33334.12, and 51659 of, to amend and renumber Section 199.78 of, to amend and renumber the headings of Article 1.8 (commencing with Section 235) of Chapter 2 of Part 1 of Division 1 of, and Part 3 (commencing with Section 13800) of Division 12 of, and to repeal Sections 26,

1317.1, 1317.2, 1317.2a, 1317.3, 1317.4, 1317.5, 1317.6, 1317.7, 1317.8, 1317.9, 1317.9a, 1798.205, and 18070.6 of, the Health and Safety Code, to amend Sections 1104.9 and 11580.2 of, to amend the heading of Article 5 (commencing with Section 10190) of Chapter 1 of Part 2 of Division 2 of, and to amend and renumber Section 11580.09 of, the Insurance Code, to amend Sections 148.6, 3366, and 3367 of the Labor Code, to amend Sections 116, 177, 203, 316, 371, 629.02, 844, 1357, 1445, 1524.1, 3417, 5068.5, 7510, and 13826.5 of, to amend and renumber Section 1203.1i of, and to repeal Sections 269, 1387.1, 7007, and 12077 of, the Penal Code, to amend Section 1835 of the Probate Code, to amend Sections 5008.5, 5015.5, and 14580 of, and to repeal Article 3 (commencing with Section 560) of Chapter 1 of Division 1 of, the Public Resources Code, to amend Sections 777.1, 1405.1, and 98147 of, to amend and renumber Sections 460.5, 2117, and 5387 of, and to add Section 5371.5 to, the Public Utilities Code, to amend Sections 4112, 17043, 23455, 23456, and 23457 of, to amend and renumber Sections 23701u and 25957.3 of, and to repeal Sections 17156, 23701u, and 24343.2 of, the Revenue and Taxation Code, to amend and renumber Section 104.8 of, to add the heading Chapter 3 (commencing with Section 6780) to Part 6 of Division 7 of, and to repeal Section 188.4 of, the Streets and Highways Code, to amend Section 1264 of, and to repeal the heading of Chapter 3.5 (commencing with former Section 5250) of Division 2 of, the Unemployment Insurance Code, to amend Sections 1807.5, 9271, and 23113 of, to amend the heading immediately preceding Section 27700 of, and to repeal Sections 1807.5, 9564, 17004.7, and 23249.51 of, the Vehicle Code, to repeal Section 13712 of the Water Code, to amend Sections 6550, 11320, 14006.1, and 16500.5 of the Welfare and Institutions Code, and to repeal Section 13 of Chapter 916 of the Statutes of 1988, relating to the maintenance of the codes.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 326 of the Business and Professions Code is amended to read:

326. (a) Upon receipt of any complaint pursuant to Section 325, the director may notify the person against whom the complaint is made of the nature of the complaint and may request appropriate relief for the consumer.

(b) The director shall also transmit any valid complaint to the local, state or federal agency whose authority provides the most effective means to secure the relief.

The director shall, if appropriate, advise the consumer of the action taken on the complaint and of any other means which may be available to the consumer to secure relief.

(c) If the director receives a complaint or receives information

from any source indicating a probable violation of any law, rule, or order of any regulatory agency of the state, or if a pattern of complaints from consumers develops, the director shall transmit any complaint he or she considers to be valid to any appropriate law enforcement or regulatory agency and any evidence or information he or she may have concerning the probable violation or pattern of complaints or request the Attorney General to undertake appropriate legal action. It shall be the continuing duty of the director to discern patterns of complaints and to ascertain the nature and extent of action taken with respect to the probable violations or pattern of complaints.

SEC. 2. Section 1206 of the Business and Professions Code is amended to read:

1206. (a) For the purposes of this chapter the following definitions are applicable:

(1) "Clinical laboratory sciences" means those scientific disciplines which relate to the examination (which includes detection, identification, measurement, or enumeration of any particular entity or substance) of biological specimens; and the evaluation, correlation, monitoring, and reporting of the results of an examination of biological specimens, for the purpose of obtaining scientific data which may be used as an aid to ascertain the presence, progress, and source of a disease or physiological condition in a human being or used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition in a human being.

(2) "Clinical laboratory practice" means the application of clinical laboratory sciences or the use of any means which applies the clinical laboratory sciences within or outside of a licensed clinical laboratory. Clinical laboratory practice includes consultation, advisory and other activities inherent to the profession.

(3) "Clinical laboratory" means any place used, or any establishment or institution organized or operated, for the practical application of the clinical laboratory sciences. That application may include any means which applies the clinical laboratory sciences.

(b) Nothing in this chapter shall restrict, limit, or prevent any person licensed to provide health care services under the laws of this state, including, but not limited to, licensed physicians and surgeons, and registered nurses, from practicing the profession or occupation for which he or she is licensed.

(c) Nothing in this chapter shall restrict, limit, or prevent the performance of toxicological analyses of biological specimens for legal, regulatory, safety, employment, or other nonmedical purposes by laboratories which are otherwise appropriately licensed to perform those procedures.

(d) Nothing in this chapter shall restrict, limit, or prevent programs of nondiagnostic general health assessment which provide significant public health benefits, as determined by the department, provided that the adequacy and reliability of the testing is

determined by personnel licensed under this chapter or a licensed physician and surgeon, and that the purpose of the assessment is to refer individuals to licensed sources of care as indicated.

SEC. 3. The heading of Article 5.5 (commencing with Section 4130) of Chapter 9 of Division 2 of the Business and Professions Code is amended and renumbered to read:

Article 5.3. Medical Device Retailers

SEC. 4. Section 4383 of the Business and Professions Code, as added by Chapter 1243 of the Statutes of 1988, is amended and renumbered to read:

4383.4. In addition to any fine assessed under Section 4382, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates Section 4143 or 4149, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this section.

SEC. 5. Section 9797 of the Business and Professions Code is amended to read:

9797. Notwithstanding any provision to the contrary, upon authorization from the customer as to a specific job, a repairperson may work on an aircraft on a time and materials basis.

SEC. 6. Section 9998.2 of the Business and Professions Code is amended to read:

9998.2. Every contract for the provision of employment services to foreign workers shall be written in the primary language of the foreign worker and shall include all material terms including, but not limited to, any and all compensation or consideration to be provided to the foreign worker in exchange for that worker's labor or services, any wages, housing, transportation, other living accommodations, and other benefits which are to be provided.

SEC. 7. 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, or may suspend or revoke the license of, or deny the issuance of a license to, a corporate applicant if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock 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 the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or 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, if 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 Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and 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) 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) Engaged in 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 the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

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

The commissioner may not deny or suspend the license of a corporate real estate broker if the offending officer, director, or stockholder has been completely disassociated from any affiliation or ownership in the corporation.

SEC. 8. 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 statement:

"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.

SEC. 9. Section 17577.1 of the Business and Professions Code is amended to read:

17577.1. For the purposes of this article, the following terms have the following meanings:

(a) "Contaminant" or "contamination" means any health-related physical, chemical, biological, or radiological substance or matter in water.

(b) "Water treatment device" means any product that (1) is designed to alter the chemical or physical properties or characteristics of water or plumbing or the seller, lessor, or renter claims can alter the chemical or physical properties or characteristics of water or plumbing and (2) is used or sold, leased, or rented for use on residential real property primarily for personal, family, or household purposes. "Water treatment device" does not include any device that is regulated pursuant to Chapter 7.5 (commencing with Section 4040) of Part 1 of Division 5 of the Health and Safety Code.

(c) "Person" means any individual, partnership, firm, corporation, or association, or any employee or agent thereof.

SEC. 10. Section 24045.5 of the Business and Professions Code is amended to read:

24045.5. The department in its discretion may issue a temporary permit to the transferee of any license to continue the operation of the premises during the period a transfer application for the license from person to person at the same premises is pending and when all the following conditions exist:

(a) The premises shall have been operated under a license within 30 days of the date of filing the application for a temporary permit.

(b) The license for the premises shall have been surrendered pursuant to rules of the department.

(c) The applicant for the temporary permit shall have filed with the department an application for transfer of the license at the premises to himself or herself.

(d) The application for the temporary permit shall be accompanied by a temporary permit fee of one hundred dollars ($100).

A temporary permit issued by the department pursuant to this section shall be for a period not to exceed 120 days. A temporary

permit may be extended at the discretion of the department for an additional 120-day period upon payment of an additional fee of one hundred dollars ($100) and upon compliance with all conditions required herein. A temporary permit is a conditional permit and authorizes the holder thereof to sell the alcoholic beverages as would be permitted to be sold under the privileges of the license for which the transfer application has been filed with the department.

Purchase of beer and wine by the holder of a temporary permit shall be made only upon payment before or at the time of delivery in currency or by check. Purchase of distilled spirits by the holder of a temporary permit shall be made only upon payment before or at the time of delivery in currency or by certified check. However, the holder of a temporary retail permit who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the temporary permit, and who is not delinquent under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the temporary permit.

All checks received by a seller for beer or wine purchased by the holder of a temporary retail permit shall be deposited not later than the second business day following the date the beer or wine is delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

Transfer of the license for which the holder of a temporary permit has filed an application shall not be approved by the department until the holder of the temporary permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

It shall not be a violation of this section or otherwise grounds for disciplinary action for any licensee to extend credit to the holder of a temporary permit or to receive payment from the permittee in a manner other than authorized herein unless the seller had knowledge of the fact that the purchaser was operating under a temporary permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under a temporary permit were posted with the notice required by Section 23985, or the holder of the temporary permit had recorded notice as required by Section 24073, or the holder of the temporary permit had published notice as required by Section 23986, or the holder of the temporary permit had recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

Refusal by the department to issue or extend a temporary permit

shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to temporary permits.

Notwithstanding any other provision of law, a temporary permit may be canceled or suspended summarily at any time if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to temporary permits.

Application for a temporary permit shall be on any form the department shall prescribe. If an application for temporary permit is withdrawn before issuance or is refused by the department, the fee which accompanied the application shall be refunded in full, and Sections 23959 and 23960 shall not apply. Fees received by the department for issuance of temporary permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 11. Section 1949 of the Civil Code is amended to read:

1949. Every tenant who receives notice of any proceeding to recover the real property occupied by him or her, or the possession of the real property, shall immediately inform his or her landlord of the proceeding, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he or she may sustain by reason of any omission to inform the landlord of the notice, or to deliver it to him or her if in writing.

SEC. 12. The heading of Article 1 (commencing with former Section 600) of Chapter 4 of Title 8 of Part 2 of the Code of Civil Procedure is repealed.

SEC. 13. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired,

a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party

giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office of the organization in California.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for the party-deponent,

unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

On motion of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent,

or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023

against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one

subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that the other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner

prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany

that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that

other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the

audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the original transcript of the testimony is available for reading and signing, unless the deponent and all these parties agree on the record to waive the reading and signing of the transcript of the testimony. For 30 days following this notice the deponent, either in person or by a signed letter to the deposition officer, may change the form or the substance of the answer to any question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it. For good cause shown the court may shorten this time.

The deposition officer shall indicate on the original any action taken by the deponent, or the failure of the deponent to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly disapproves the accuracy of the transcript by refusing to sign it, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the

deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court,

on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who received, notice of the deposition may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is any of the following:

(i) Exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant.

(ii) Disqualified from testifying.

(iii) Dead or unable to attend or testify because of existing physical or mental illness or infirmity.

(iv) Absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process.

(v) Absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 14. Section 204.5 of the Corporations Code, as added by Chapter 1201 of the Statutes of 1987, is repealed.

SEC. 15. Section 1203 of the Corporations Code is amended to read:

1203. (a) If a tender offer or a written proposal for approval of a reorganization subject to Section 1200 or for a sale of assets subject to subdivision (a) of Section 1001 is made to some or all of a corporation's shareholders by an interested party (herein referred to as an "Interested Party Proposal"), an affirmative opinion in writing as to the fairness of the consideration to the shareholders of that corporation shall be delivered as follows:

(1) If no shareholder approval or acceptance is required for the consummation of the transaction, the opinion shall be delivered to the corporation's board of directors not later than the time that consummation of the transaction is authorized and approved by the board of directors.

(2) If a tender offer is made to the corporation's shareholders, the opinion shall be delivered to the shareholders at the time that the tender offer is first made in writing to the shareholders.

(3) If a shareholders' meeting is to be held to vote on approval of the transaction, the opinion shall be delivered to the shareholders with the notice of the meeting (Section 601).

(4) If consents of all shareholders entitled to vote are solicited in writing (Section 603), the opinion shall be delivered at the same time as that solicitation.

(5) If the consents of all shareholders are not solicited in writing, the opinion shall be delivered to each shareholder whose consent is solicited prior to that shareholder's consent being given, and to all other shareholders at the time they are given the notice required by subdivision (b) of Section 603.

For purposes of this section, the term "interested party" means a person who is a party to the transaction and (A) directly or indirectly controls the corporation that is the subject of the tender offer or proposal, (B) is, or is directly or indirectly controlled by, an officer or director of the subject corporation, or (C) is an entity in which a material financial interest (subdivision (a) of Section 310) is held by any director or executive officer of the subject corporation. For purposes of subparagraph (C), "any executive officer" means the president, any vice president in charge of a principal business unit, division, or function such as sales, administration, research, development, or finance, and any other officer or other person who performs a policymaking function or has the same duties as those of a president or vice president. The opinion required by this subdivision shall be provided by a person who is not affiliated with the offeror and who, for compensation, engages in the business of advising others as to the value of properties, businesses, or securities. The fact that the opining person previously has provided services to the offeror or a related entity or is simultaneously engaged in providing advice or assistance with respect to the proposed transaction in a manner which makes its compensation contingent on the success of the proposed transaction shall not, for those reasons, be deemed to affiliate the opining person with the offeror. Nothing in this subdivision shall limit the applicability of the standards of review of the transaction in the event of a challenge thereto under Section 310 or subdivision (c) of Section 1312.

This subdivision shall not apply to an Interested Party Proposal if the corporation that is the subject thereof does not have shares held of record by 100 or more persons (determined as provided in Section 605), or if the transaction has been qualified under Section 25113 or 25120 and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to that qualification.

(b) If a tender of shares or a vote or written consent is being sought pursuant to an Interested Party Proposal and a later tender offer or written proposal for a reorganization subject to Section 1200 or sale of assets subject to subdivision (a) of Section 1001 that would require a vote or written consent of shareholders is made to the corporation or its shareholders (herein referred to as a "Later Proposal") by any other person at least 10 days prior to the date for acceptance of the tendered shares or the vote or notice of shareholder approval on the Interested Party Proposal, then each of the following shall apply:

(1) The shareholders shall be informed of the Later Proposal and any written material provided for this purpose by the later offeror shall be forwarded to the shareholders at that offeror's expense.

(2) The shareholders shall be afforded a reasonable opportunity to withdraw any vote, consent, or proxy previously given before the vote or written consent on the Interested Party Proposal becomes effective, or a reasonable time to withdraw any tendered shares before the purchase of the shares pursuant to the Interested Party Proposal. For purposes of this subdivision, a delay of 10 days from the notice or publication of the Later Proposal shall be deemed to provide a reasonable opportunity or time to effect that withdrawal.

SEC. 16. The heading of Article 16 (commencing with former Section 1930) of Chapter 6 of Part 2 of the Education Code is repealed.

SEC. 17. Section 5011 of the Education Code is repealed.

SEC. 18. The heading of Article 2 (commencing with former Section 10010) of Chapter 1 of Part 7 of the Education Code is repealed.

SEC. 19. The heading of Chapter 10 (commencing with former Section 19800) of Part 11 of the Education Code is repealed.

SEC. 20. Section 33324 of the Education Code is amended to read:

33324. (a) The State Department of Education shall annually disseminate to each school district, county office of education, resource agency or consortium as described in Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25, and other public educational entity, as appropriate, information regarding effective educational projects and programs developed and validated pursuant to this article, in addition to projects included in the National Diffusion Network.

(b) The California State Facilitator Project, county offices of education, and other regional educational agencies are encouraged to assist in the dissemination of information regarding effective educational programs.

(c) The State Board of Education, upon review of the recommendation of the Superintendent of Public Instruction, may authorize funds for any proposal of a school district or county office of education for the adoption of an effective educational project, in an amount not exceeding the initial start-up costs of the project, where the board determines that the proposal does all of the following:

(1) Establishes a local need for the adoption or adaptation of the project.

(2) Contains a plan that evidences the commitment of resources necessary to implement the adoption of the project and that coordinates the project with existing educational programs. In the case of a school, that plan should be articulated with the school district plan.

(3) Contains a method of evaluating resulting changes in teaching, pupil performance, and the instructional program.

(4) Has been validated pursuant to Section 33323.

(d) The Superintendent of Public Instruction may assist in the implementation of projects adopted pursuant to subdivision (b),

either by the department or pursuant to Section 33326.

SEC. 21. The heading of Article 14 (commencing with former Section 35340) of Chapter 2 of Part 21 of the Education Code is repealed.

SEC. 22. Section 37223 of the Education Code is amended to read:

37223. The governing board of any elementary, high school, or unified school district or any county superintendent of schools may maintain classes on Saturday or Sunday, or both.

The classes may include, but are not limited to, continuation classes, special day classes for mentally gifted minors, makeup classes for unexcused absences occurring during the week, and the programs of a regional occupational center or regional occupational program.

Except as otherwise provided in this code, the attendance of any pupil in a class or program held on a Saturday or Sunday shall not result in the crediting of more than five days of attendance for the pupil per week.

Attendance at classes conducted on Saturday or Sunday, or both, shall be at the election of the pupil or, in the case of a minor pupil, the parent or guardian of the pupil. However, the governing board may require truants, as defined by Section 48260, to attend makeup classes conducted on one day of a weekend.

Except as otherwise provided in this code, any class which is offered on a Saturday or Sunday shall be one offered during the regular Monday through Friday school week.

The voluntary attendance of pupils in approved programs for mentally gifted minors, as defined in Section 52200, in special educational activities conducted on Saturday or Sunday shall not be included in the computation of the average daily attendance of the district.

SEC. 23. Section 41020.5 of the Education Code is amended to read:

41020.5. (a) Whenever the Controller determines by two consecutive quality control reviews pursuant to Section 14504.2 that audits performed by a certified public accountant or public accountant under Section 41020 were not performed in substantial conformity with provisions of the audit guide, or that the audit reports, including amended reports, submitted by February 15 following the close of the fiscal year audited, for two consecutive years do not conform to provisions of the audit guide as required by Section 14504, the Controller shall notify in writing the certified public accountant or public accountant and the State Board of Accountancy.

If the certified public accountant or public accountant does not file an appeal in writing with the State Board of Accountancy within 30 calendar days after receipt of the Controller's notification, the Controller's determination under this section shall be final.

(b) If an appeal is filed with the State Board of Accountancy, the board shall complete an investigation of the appeal within 90 days of

the filing date. On the basis of the investigation, the board may do either of the following:

(1) Find that the Controller's determination should not be upheld and has no effect.

(2) Schedule the appeal for a hearing, in which case, the final action on the appeal shall be completed by the board within one year from the date of filing the appeal.

(c) If the Controller's determination under subdivision (a) becomes final, the certified public accountant or public accountant shall be ineligible to conduct audits under Section 41020 for a period of three years, or, in the event of an appeal, for any period, and subject to the conditions, that may be ordered by the State Board of Accountancy. Not later than the first day of March of each year, the Controller shall notify each school district and county office of education of those certified public accountants or public accountants determined to be ineligible under this section. School districts and county offices of education shall not use the audit services of a certified public accountant or public accountant ineligible under this section.

For the purposes of this section, the term "certified public accountant or public accountant" shall include any person or firm entering into a contract to conduct an audit under Section 41020.

This section shall not preclude the State Board of Accountancy from taking any disciplinary action it deems appropriate under other provisions of law.

SEC. 24. Section 44200 of the Education Code is amended to read:

44200. This chapter shall be known and may be cited as the "Teacher Credentialing Law of 1988" or "The Bergeson Act."

SEC. 25. Section 44680.08 of the Education Code is repealed.

SEC. 26. Section 44868 of the Education Code is amended to read:

44868. No person shall be employed as a library media teacher in any elementary or secondary school, unless he or she holds a valid credential of proper grade authorizing service as a library media teacher or a valid teaching credential issued by the Commission on Teacher Credentialing if he or she has completed the specialized area of librarianship.

SEC. 27. Section 46202 of the Education Code is amended to read:

46202. (a) Except as otherwise provided in this section, in any fiscal year, if the governing board of a school district offers less instructional time than the amount of instructional time fixed for the 1982–83 fiscal year, the Superintendent of Public Instruction shall in that fiscal year reduce that district's apportionment by the average percentage increase in the base revenue limit for districts of similar type and size, multiplied by the district's units of average daily attendance.

(b) The Glendora Unified School District shall reinstate the sixth period, which shall be equivalent to at least 50 minutes of instruction, effective the start of the second semester of the 1983–84 fiscal year.

(c) (1) Subdivision (a) shall not apply to the Loma Prieta Joint

Union Elementary School District in Santa Clara County for developmental kindergarten classes conducted in that district in the 1987–88 fiscal year and each fiscal year thereafter, if the district maintains at least 36,000 minutes of instructional time in those classes.

(2) For purposes of this subdivision, "developmental kindergarten classes" means those classes conducted only for children who show weaknesses in one or more of the following developmental areas:

(A) Physiological development.

(B) Social maturity.

(C) Emotional maturity.

(D) Language and communication skills.

SEC. 28. The heading of Article 3 (commencing with former Section 48020) of Chapter 1 of Part 27 of the Education Code is repealed.

SEC. 29. The heading of Article 5 (commencing with former Section 48040) of Chapter 1 of Part 27 of the Education Code is repealed.

SEC. 30 Section 51551 of the Education Code, as added by Chapter 1337 of the Statutes of 1988, is amended and renumbered to read:

51553. (a) All public elementary, junior high, and senior high school classes that teach sex education and discuss sexual intercourse shall emphasize that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually. All material and instruction in classes that teach sex education and discuss sexual intercourse shall be age appropriate.

(b) All sex education courses that discuss sexual intercourse shall satisfy the following criteria:

(1) Course material and instruction shall be age appropriate.

(2) Course material and instruction shall stress that abstinence is the only contraceptive method which is 100 percent effective, and that all other methods of contraception carry a risk of failure in preventing unwanted teenage pregnancy. Statistics based on the latest medical information shall be provided to pupils citing the failure and success rates of condoms and other contraceptives in preventing pregnancy.

(3) Course material and instruction shall stress that sexually transmitted diseases are serious possible hazards of sexual intercourse. Pupils shall be provided with statistics based on the latest medical information citing the failure and success rates of condoms in preventing AIDS and other sexually transmitted diseases.

(4) Course material and instruction shall include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse outside of marriage and the consequences of unwanted adolescent pregnancy.

(5) Course material and instruction shall stress that pupils should abstain from sexual intercourse until they are ready for marriage.

(6) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(7) Course material and instruction shall advise pupils of the laws pertaining to their financial responsibility to children born in and out of wedlock.

(8) Course material and instruction shall advise pupils that it is unlawful for males of any age to have sexual relations with females under the age of 18 to whom they are not married pursuant to Section 261.5 of the Penal Code.

(9) Course material and instruction shall emphasize that the pupil has the power to control personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control, and ethical considerations, such as respect for one's self and others.

(10) Course material and instruction shall teach pupils to not make unwanted physical and verbal sexual advances and how to say no to unwanted sexual advances. Pupils shall be taught that it is wrong to take advantage of, or to exploit, another person. The material and instruction shall also encourage youth to resist negative peer pressure.

(c) This section shall become operative July 1, 1989.

SEC. 31. The heading of Article 1 (commencing with former Section 51700) of Chapter 5 of Part 28 of the Education Code is repealed.

SEC. 32. The heading of Article 2 (commencing with former Section 51710) of Chapter 5 of Part 28 of the Education Code is repealed.

SEC. 33. The heading of Article 3 (commencing with former Section 54030) of Chapter 1 of Part 29 of the Education Code is repealed.

SEC. 34. Article 8 (commencing with Section 56771) of Chapter 7 of Part 30 of the Education Code, as added by Chapter 115 of the Statutes of 1985, is repealed. The repeal made by this section shall not affect the existence or validity of Article 8 (commencing with Section 56771) of Chapter 7 of Part 30 of the Education Code, as added by Chapter 1603 of the Statutes of 1985.

SEC. 35. Part 40.5 (commencing with Section 67175) of the Education Code, as added by Chapter 1169 of the Statutes of 1986, is repealed. The repeal made by this section shall not affect the existence or validity of Part 40.5 (commencing with Section 67500) of the Education Code, as added by Chapter 1224 of the Statutes of 1986.

SEC. 36. Section 69562 of the Education Code is amended to read:

69562. The commission shall establish a 12-member project grant advisory committee to advise project directors and the commission on the development and operation of the projects, and consisting of the following:

(a) Three representatives of outreach programs, representing the University of California, the California State University, and the California Community Colleges, appointed by their respective governing boards.

(b) One representative of private colleges and universities, appointed by the Association of California Independent Colleges and Universities.

(c) One representative of the California Postsecondary Education Commission, appointed by the commission.

(d) Two secondary school staff, appointed by the Superintendent of Public Instruction.

(e) Two persons representing the general public, one appointed by the Speaker of the Assembly and the other by the Senate Rules Committee.

(f) Two postsecondary students, both appointed annually by the Student Advisory Committee of the California Postsecondary Education Commission.

(g) One college campus financial aid officer, appointed by the Student Aid Commission.

SEC. 37. Section 76170 of the Education Code is amended to read:

76170. (a) There is hereby established a two-year pilot program in Fresno County.

(b) No fee otherwise authorized by Article 9 (commencing with Section 76140) of Chapter 1 of Part 47 may be charged to any participant in the Fresno County Greater Avenues for Independence (GAIN) Program, described in Article 3.2 (commencing with Section 11320) of Part 3 of Division 9 of the Welfare and Institutions Code if both of the following requirements are satisfied:

(1) Prior to the waiver of the nonresident tuition for a GAIN participant, the student shall have exhausted all efforts to obtain federal financial assistance.

(2) Each course into which a nonresident GAIN participant enrolls shall be related to the educational plan of the participant.

SEC. 38. A heading is added immediately preceding Section 82321 as Article 2 (commencing with Section 82321) of Chapter 7 of Part 49 of the Education Code, to read:

Article 2. Schoolbuses

SEC. 39. Section 84773 of the Education Code is repealed.

SEC. 40. Section 87001 of the Education Code, as added by Chapter 973 of the Statutes of 1988, is amended and renumbered to read:

87001.5. The board of governors shall adopt regulations defining positions subject to minimum qualifications as set forth in subdivisions (a), (b), and (c). Unless and until amended pursuant to Section 87357, the regulations shall initially establish the definitions as the following:

(a) "Administrator" means any person employed by the governing board of a community college district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Instructional or student services administrator" means an administrator who is employed in a position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Instructional and student services administrators include, but are not limited to, chancellors, presidents, and instructional or student services managers.

(c) "Faculty" means those employees of a community college district who are employed in positions that are not designed as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for hire have been specified in the regulations of the board of governors adopted pursuant to subdivision (a) of Section 87356. Faculty include, but are not limited to, instructors, librarians, counselors, community college health services professionals, handicapped student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement certification qualifications.

SEC. 41. Section 23512.2 of the Elections Code is amended 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. 42. Section 1364 of the Financial Code is amended to read:

1364. In evidences of indebtedness of companies incorporated in the United States and, directly or indirectly, engaged in manufacturing, extraction, merchandising, or commercial financing and in bonds of authorities established pursuant to the California Industrial Development Financing Act (Title 10 (commencing with Section 91500) of the Government Code), to which these companies are obligated with respect to payment subject to the following conditions:

(a) Any unsecured evidences of indebtedness shall be issued by a company substantially all of whose property is free of mortgage and shall carry a covenant by the obligor that they will be secured equally with any mortgage bond, except a purchase money mortgage, which may be later issued.

(b) The company is of a size as to attract at least statewide interest in its publicly held securities and its gross income shall have averaged not less than ten million dollars ($10,000,000) and its net income shall have averaged not less than one million dollars ($1,000,000) for the five fiscal years preceding the investment and its gross income was not less than ten million dollars ($10,000,000) and its net income not less than one million dollars ($1,000,000) for at least three of these five fiscal years.

(c) Working capital, as measured by consolidated current assets less consolidated current liabilities as shown in the latest published balance sheet, shall exceed 150 percent of the total of consolidated debt due in longer than one year and "minority interest" (i.e., any outstanding interest in a subsidiary having a prior claim on the earnings of the subsidiary). However, the foregoing ratio requirement shall not apply in the case of evidences of indebtedness of any corporation whose consolidated gross assets less any valuation reserves exceed five hundred million dollars ($500,000,000) and whose consolidated current assets exceed consolidated current liabilities by at least one hundred million dollars ($100,000,000) as shown by the latest published balance sheet. When new financing is involved, the changes in gross assets, capital structure and working capital shall be considered and reliance may be placed on the representations made in the official prospectus prepared under the rules of the Securities and Exchange Commission as to the application of the proceeds of the financing.

(d) The total consolidated debt of the company including current liabilities and "minority interest" (i.e., any outstanding interest in a subsidiary having a prior claim on the earnings of the subsidiary), as shown on the latest published balance sheet, does not exceed 33⅓ percent of its gross assets less valuation reserves.

(e) The consolidated annual net income for the five fiscal years next preceding the investment, before deduction of state and federal taxes imposed on or measured by income or profits but after deducting all charges (including reserves, regularly recurring charges for amortization of discount, and expense allocable to funded debt); (1) shall have averaged not less than six times the annual consolidated interest charges existing at the time the investment is made; (2) in at least three of the five fiscal years shall have been at least four times the annual consolidated interest charges for the same year; and (3) for the fiscal year next preceding the investment shall have been not less than six times the consolidated interest charges for that year and not less than six times the annual consolidated charges on the funded debt outstanding at the time of the investment.

SEC. 43. Section 1002 of the Fish and Game Code is amended to read:

1002. (a) The department may issue permits, subject to restrictions and regulations which the commission determines are desirable, to take or possess, in any part of the state, for scientific, educational, or propagation purposes, mammals, birds and the nests and eggs thereof, fish, amphibia, reptiles, or any other form of plant or animal life.

(b) The department may issue a permit, which is valid for 24 months from the date of issuance, to a resident of this state on the payment of a base fee of thirty dollars ($30), as adjusted under Section 713.

(c) Notwithstanding subdivision (b), the department may issue a permit without fee, which is valid for 12 months from the date of issuance, for either of the following purposes:

(1) To authorize only the banding of birds and the exhibition of live or dead wildlife specimens by public zoological gardens, scientific, or educational institutions.

(2) To a student who is regularly enrolled in a commercial fishing class in a school operating under the jurisdiction of the State Board of Education or in a commercial fishing class in a community college and to a faculty member of those schools or a community college when conducting a regularly enrolled class in commercial fishing. Any permit issued under this paragraph shall be valid only when the student is under the direct supervision of the instructor who is approved by the school or community college to teach the class and who has obtained a permit under subdivision (b) or this paragraph from the department. All fish taken shall be taken in accordance with state law except that Sections 7850 and 7880 to 7890, inclusive, do not apply to persons or equipment operating under this paragraph. All fish taken under a permit issued under this paragraph may be sold only to a person licensed to receive fish from commercial fishermen as provided in Section 8032 or 8033 or donated to a charitable institution. All funds received from the sale of the fish shall be used solely for the support of the commercial fishing classes.

(d) The department may issue a special student permit, which is valid for 12 months from the date of issuance, on the payment of a base fee of ten dollars ($10), as adjusted under Section 713, to any student in a school of collegiate level who is required by an instructor in wildlife research in the school to collect specimens used in laboratory work in the school under supervision and in connection with a course in wildlife research or in the conduct of wildlife investigations and studies on behalf of the public.

(e) The department may issue a nonresident permit, which is valid for 24 months from the date of issuance, on application and payment of a base fee of one hundred dollars ($100) as adjusted under Section 713.

(f) It is not necessary for the possessor of the permit to have a sportfishing or hunting license to pursue the scientific collecting of

any fish, reptile, aquatic animal or plant, bird, or mammal in this state.

(g) Nothing in this section authorizes any act which violates Section 597 of the Penal Code.

(h) A permit under this section does not authorize the taking of fish or mammals from the ocean waters of this state which are within the boundaries of any city if the city has filed with the department an objection to the taking.

SEC. 44. Section 8150.8 of the Fish and Game Code is amended to read:

8150.8. (a) Any sardine quota established by the department under Section 8150.7 shall be allocated in the following manner:

(1) Twenty percent of the quota shall be reserved for fishermen landing their catches north of Point Buchon in San Luis Obispo County.

(2) Eighty percent of the quota shall be reserved for fishermen landing their catches south of Point Buchon.

(b) 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. 45. Section 12002.5 of the Fish and Game Code, as added by Chapter 379 of the Statutes of 1988, is amended and renumbered to read:

12002.3. (a) Notwithstanding Sections 12000, 12001, and 12002, a certificate of boat registration may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of the registrant, or the registrant's agent, servant, employee, or any other person acting under the registrant's direction or control, for a violation of Section 7121 or the regulations adopted pursuant thereto, if the violation in question involved a vessel licensed pursuant to Section 7920.

(b) Notwithstanding Sections 12000, 12001, and 12002, a certificate of boat registration of a vessel licensed pursuant to Section 7920 may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of any other person for a violation of Section 7121, if the fish or amphibia involved in the violation were taken from the vessel and that person committed a prior violation of Section 7121 within three years on the vessel.

(c) The certificate shall not be revoked under this section for a violation which is unrelated to the vessel for which the certificate of registration is to be revoked. Any violation committed without the knowledge of the master, or an agent or employee of the registrant, is unrelated to the vessel.

(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. 46. Section 69051 of the Food and Agricultural Code is amended to read:

69051. The powers and duties of the commission, subject to Sections 69032 and 69033, shall include, but are not limited to, all of the following powers and duties:

(a) To adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders for carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, or order of the commission.

(b) To administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to, or in connection with, or determined reasonably necessary for, the proper or advisable effectuation of the purposes of this chapter.

(c) To appoint its own officers, including a chairperson, one or more vice chairpersons, and any other officers as it determines necessary. The officers have the powers and duties delegated to them by the commission.

(d) To employ a manager to serve at the pleasure of the commission as president and chief executive officer of the commission, and other personnel, including legal counsel, that is necessary to carry out this chapter. The commission may retain a management firm or the staff from any board, commission, or committee of the state to perform the functions prescribed by this subdivision under the control of the commission. If the manager engages in any conduct which the director determines is not in the public interest or which is in violation of this chapter, the director shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the director, the director may suspend or discharge the manager.

(e) To fix the compensation for all employees of the commission.

(f) To appoint committees composed of both members and nonmembers of the commission, such as a processor advisory committee, to advise the commission in carrying out this chapter.

(g) To establish offices and incur expenses, invest funds in the permissible investments as specified in Section 58939, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments as may be necessary, in the opinion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(h) To keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the director. The audit shall be made a part of an annual report to all producers of pistachios, copies of which shall also be submitted to the Legislature and the department. In addition, the director may, as he or she determines necessary, conduct or cause to be conducted a fiscal and compliance audit of the commission. The Department of Finance may audit books, records, and accounts of the commission at any time.

(i) To promote the sale of pistachios by advertising and other promotional means, including cost-sharing advertising, for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for pistachios, and to educate and instruct the public with respect to the uses, healthful properties, and nutritional value of pistachios.

(j) To educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling pistachios, make market surveys and analyses, and present facts to, and negotiate with, state, federal, and foreign agencies on matters which affect the marketing of pistachios.

(k) To make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements as the commission may determine necessary for the promotion of the sale of pistachios.

(*l*) To conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere, respecting cultural and production practices, and marketing and distribution of pistachios. In connection with the research, the commission may accept contributions of, or match, private, state, or federal funds that may be available for these purposes, and employ or make contributions of funds to other persons or state or federal agencies conducting the research.

(m) To publish and distribute, without charge, a bulletin or other communication for dissemination of information relating to the pistachio industry, to producers and processors.

(n) To establish an assessment rate to defray operating costs of the commission. Any assessment rate established pursuant to this chapter may be modified in accordance with Section 69081.

(o) To establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the director prior to disbursement of funds, except for disbursements made pursuant to subdivision (e).

(p) To submit to the director, for his or her concurrence, an annual statement of contemplated activities authorized under this chapter, including advertising, promotion, marketing research, and production research.

SEC. 47. Section 421.5 of the Government Code, as added by Chapter 1198 of the Statutes of 1988, is amended and renumbered to read:

421.7. "I Love You, California," a song published in 1913 with lyrics by F.B. Silverwood and music by A.F. Frankenstein, is an official state song.

SEC. 48. Section 831.21 of the Government Code, as added by Chapter 1201 of the Statutes of 1987, is repealed.

SEC. 49. Chapter 6 (commencing with Section 962) of Part 4 of Division 3.6 of Title 1 of the Government Code, as added by Chapter 1201 of the Statutes of 1987, is repealed.

SEC. 50. Chapter 3.7 (commencing with Section 984) of Part 5 of Division 3.6 of Title 1 of the Government Code, as added by Chapter 1201 of the Statutes of 1987, is repealed.

SEC. 51. Article 4 (commencing with Section 9220) of Chapter 2 of Part 1 of Division 2 of Title 2 of the Government Code is amended and renumbered to read:

Article 4.5. Speaker of the Assembly

SEC. 52. Section 11126 of the Government Code is amended to read:

11126. (a) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program

concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For purposes of this subdivision, the negotiator may be a member of the state body.

For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease.

Nothing in this subdivision shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(j) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(k) Nothing in this article shall be construed to prevent the

Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(*l*) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body which invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues which could have a material effect on the net income of the corporation. For the purpose of real property investment decisions which may be considered in a closed session pursuant to this subdivision, a state body shall also be exempt from the provision of subdivision (i) relating to the identification of real properties prior to the closed session.

(o) Nothing in this article shall be construed to prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

For purposes of this article, all expressions of the lawyer-client

privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(2) (A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body; or

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(3) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(r) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(s) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503.

Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(t) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter which properly could be considered in closed session by the state body whose authority it exercises.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter which properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter which properly could be considered in a closed session by the state body it advises.

(w) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions for either of the following:

(1) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(2) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(x) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(y) This article shall not prevent the Teachers' Retirement Board from holding closed sessions when considering matters pertaining to the appointment or removal of the Chief Executive Officer of the State Teachers' Retirement System.

SEC 53. Section 11511.5 of the Government Code, as added by Chapter 597 of the Statutes of 1986, is repealed.

SEC. 54. Section 12480 of the Government Code, as added by Chapter 1270 of the Statutes of 1982, is repealed.

SEC. 55. Section 12528 of the Government Code, as added by Chapter 445 of the Statutes of 1987, is amended and renumbered to read:

12527.5. For purposes of this article, any property which is obtained in connection with any deceptive or misleading statements or conduct shall be deemed obtained through constructive fraud.

SEC. 56. Section 13965.1 of the Government Code, as added by Chapter 1214 of the Statutes of 1987, is repealed.

SEC. 57. Section 13969.2 of the Government Code, as added by

Chapter 1214 of the Statutes of 1987, is repealed.

SEC. 58. Section 15379.3 of the Government Code is amended to read:

15379.3. (a) There is hereby established within the department the California Competitive Technology Program to provide grants to technology transfer projects. The department may fund a variety of technology transfer projects, including, but not limited to, the following: access to ongoing research and research findings, exchange or transfer of personnel, research support services, including capital outlay, and collaborative research.

(b) The department shall fund projects that include, but are not limited to, environmental improvement, energy development, advanced materials, automated manufacturing, biotechnology, optoelectronics, manufacturing technologies, medical technologies, electronics, computer science, software, robotics, and superconductivity.

(c) (1) The department shall award grants based upon a competitive two part application process addressing the project's eligibility and ability to fulfill the goals of the program. This process shall include:

(A) A preliminary qualifications screening.

(B) A proposal review which shall include a peer review of the proposal's scientific and technological aspects.

(2) The request for application may include categories of technologies or industries for project funding. The department shall periodically determine and update the categories of technologies and industries based upon advice from the Competitive Technology Advisory Committee. The request for application may also indicate the allocation of grant funds between the categories of technologies and industries

(d) The department may award grants for a multiyear period of time not to exceed five years. Funds for the second and subsequent years of a multiyear grant shall be contingent upon satisfactory completion by the grantee of the prior year grant.

SEC. 59. Section 17313.5 of the Government Code is repealed.

SEC. 60. Section 21209 of the Government Code, as added by Chapter 602 of the Statutes of 1988, is amended and renumbered to read·

21209.3. An application for a refund of the member's accumulated contributions or an election of optional settlement and beneficiary designation shall contain the signature of the current spouse of the member, unless the member makes, in writing under penalty of perjury, any of the following declarations:

(a) That the member is not married.

(b) That the member does not know, and has taken all reasonable steps to determine, the whereabouts of the current spouse.

(c) That the current spouse has been advised of the application and has refused to sign the written acknowledgment.

(d) That the current spouse is incapable of executing the

acknowledgment because of incapacitating mental or physical condition.

(e) That the member and the current spouse have executed a marriage settlement agreement pursuant to Chapter 6 (commencing with Section 5133) of Title 8 of Part 5 of Division 4 of the Civil Code which makes the community property law inapplicable to the marriage.

No retirement or refund payment shall be made when there is no spousal signature or when the member has made no declaration under subdivisions (a) to (e), inclusive.

The sole purpose of this section is to notify the current spouse of the selection of specified benefits made by a member.

This section shall become operative on January 1, 1990.

SEC. 61. The heading of Article 3 (commencing with former Section 22310) of Chapter 2 of Part 4 of Division 5 of Title 2 of the Government Code is repealed.

SEC. 62. Article 12 (commencing with Section 53590) of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code, as added by Chapter 511 of the Statutes of 1985, is repealed.

SEC. 63. Section 74782.1 of the Government Code, as added by Chapter 1549 of the Statutes of 1985, is repealed.

SEC. 64. Article 35.5 (commencing with Section 74915) of Chapter 10 of Title 8 of the Government Code, as added by Chapter 1230 of the Statutes of 1980, is repealed.

SEC. 65. Section 77400.1 of the Government Code, as added by Chapter 1243 of the Statutes of 1988, is repealed.

SEC. 66. Section 26 of the Health and Safety Code, as added by Chapter 1088 of the Statutes of 1988, is repealed.

SEC. 67. Section 199.78 of the Health and Safety Code, as added by Chapter 1537 of the Statutes of 1988, is amended and renumbered to read:

199.78.5. (a) The state department shall, in coordination with the State Department of Alcohol and Drug Programs, develop a plan which assesses the need for, a program of acquired immune deficiency syndrome (AIDS) primary prevention, health education, testing, and counseling, specifically designed for women and children, which shall be integrated, as the department deems appropriate, into the following programs:

(1) The California Childrens Services Program provided for pursuant to Article 2 (commencing with Section 248).

(2) Programs under the Maternal and Child Health Branch of the department.

(3) The Child Health Disability Prevention Program provided for pursuant to Article 3.4 (commencing with Section 320).

(4) The Genetic Disease Program, provided for pursuant to Sections 309 and 309.5.

(5) The Family Planning Programs, provided for pursuant to Chapter 8.5 (commencing with Section 14500) of Part 3 of Division 9 of the Welfare and Institutions Code.

(6) The Rural and Community Health Clinics Program.

(7) The County Health Services Program, provided for pursuant to Part 4.5 (commencing with Section 16700) of Part 3 of Division 9 of the Welfare and Institutions Code.

(8) The Sexually Transmitted Disease Program.

(9) Programs administered by the State Department of Alcohol and Drug Programs.

(b) The AIDS-related services which shall be addressed in the plan specified in this section shall include, but not be limited to, all of the following:

(1) A variety of educational materials which are appropriate to the cultural background and educational level of the program clientele.

(2) The availability of confidential HIV antibody testing and counseling either onsite or by referral.

(c) Pursuant to subdivision (a), the plan shall include a method to provide the educational materials specified in subdivision (b) and appropriate AIDS-related training programs for those persons who provide direct services to women and children receiving services under the programs specified in this section.

(d) In order that the AIDS-related services plan provided through the programs specified in this section be as effective as possible, the state department shall ensure that the educational materials and training programs provided for each program specified in subdivision (a) are developed in coordination with, and with input from, each of the respective programs.

(e) Nothing in this section shall preclude the state department from incorporating the plan requirements into the department's annual state AIDS plan, or any other reporting document relating to AIDS deemed appropriate by the department.

SEC. 68. Section 199.715 of the Health and Safety Code is amended to read:

199.715. The state department may approve up to 20 pilot projects to provide housing and food for homeless persons who have AIDS or ARC. The state department may provide funding to a selected number of these pilot projects. All approved pilot projects shall enter into a contract with the state department, which shall define the conditions for participation as pilot projects. Notwithstanding Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2, an approved pilot project shall not be required to be licensed if it is organized and operated for the purpose of providing room and board to homeless persons with AIDS or ARC and it is not organized and operated to directly provide medical or nursing care.

The pilot projects shall maintain a written agreement for referral and acceptance of residents with at least one registered nurse case manager, general acute care hospital, and licensed home health agency. The contract requirements for the pilot projects shall include the criteria and protocols which the state department

determines are appropriate to assure that the health, safety, and welfare of residents are protected. The state department may additionally provide for or enter into a contract for evaluation and assessment related to the approved pilot projects.

The implementation of these pilot projects 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.

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 date on which it becomes inoperative and is repealed.

SEC. 69. The heading of Article 1.8 (commencing with Section 235) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code is amended and renumbered to read:

Article 1.7. Nutrition

SEC. 70. Section 1317.1 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed

SEC. 71. Section 1317.2 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 72. Section 1317.2a of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 73. Section 1317.3 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 74. Section 1317.4 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 75. Section 1317.5 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 76. Section 1317.6 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 77. Section 1317.7 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 78. Section 1317.8 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 79. Section 1317.9 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 80. Section 1317.9a of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 81. Section 1343 of the Health and Safety Code is amended to read:

1343. (a) This chapter shall apply to health care service plans and specialized health care service plan contracts as defined in subdivisions (f) and (n) of Section 1345.

(b) The commissioner may by the adoption of rules deemed necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this chapter any class of persons or plan contracts if the commissioner finds the action to be in the public interest and not detrimental to

the protection of subscribers, enrollees, or persons regulated under this chapter, and that the regulation of the persons or plan contracts is not essential to the purposes of this chapter.

(c) The commissioner, upon request of the Director of Health Services, shall exempt from this chapter any county-operated pilot program contracting with the State Department of Health Services pursuant to Article 7 (commencing with Section 14490) of Chapter 8 of Part 3 of Division 9 of the Welfare and Institutions Code. The commissioner may exempt non-county-operated pilot programs upon request of the Director of Health Services. Those exemptions may be subject to conditions the Director of Health Services deems appropriate.

(d) This chapter shall not apply to:

(1) A person organized and operating pursuant to a certificate issued by the Insurance Commissioner unless the entity is directly providing the health care service through those entity-owned or contracting health facilities and providers, in which case this chapter shall apply to the insurer's plan and to the insurer.

(2) A plan directly operated by a bona fide public or private institution of higher learning which directly provides health care services only to its students, faculty, staff, administration, and their respective dependents.

(3) A nonprofit corporation formed under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2 of the Insurance Code.

(4) A person who does all of the following:

(A) 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.

(B) Has obtained a written license pursuant to Chapter 2 (commencing with Section 1250) or Chapter 3.2 (commencing with Section 1569) of this division.

(C) Has obtained a certificate of authority from the State Department of Social Services.

SEC. 82. 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 who require that level of care as an alternative to a group home. 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. The 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 of the Welfare and Institutions Code.

(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) "Full-service adoption agency" means any licensed entity engaged in the business of providing adoption services, who does all

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 full-service adoption agencies shall be organized and operated on a nonprofit basis.

(10) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, who does all of the following:

(A) Assesses the prospective adoptive parents.

(B) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved adoptive applicants.

(C) Cooperatively supervises adoptive placements with a full-service adoptive agency, but does not disrupt a placement or remove a child from a placement.

Private noncustodial 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. 83. Section 1502.5 of the Health and Safety Code is amended to read:

1502.5. Notwithstanding Section 1502, residential care facilities for the elderly, as defined in Section 1569.2, shall not be considered community care facilities and shall be subject only to the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)).

SEC. 84. Section 1596.865 of the Health and Safety Code is amended to read:

1596.865. (a) It is the intent of the Legislature to encourage any person who provides child care in a child day care facility licensed pursuant to this chapter, Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) to have the following elementary health care training:

(1) Cardiopulmonary resuscitation.

(2) Pediatric first aid.

(3) Preventive health practices, including food preparation and sanitation practices, that reduce the spread of infectious diseases.

(b) The State Department of Education shall convene a task force composed of representatives of the following: three representatives of the American Academy of Pediatrics, one public health nurse, one county director of maternal and child health, one health educator, one representative of the child resource and referral programs, two representatives of family day care operators, one representative of

publicly funded child care centers, two representatives of major regional associations representing privately operated child care centers, two representatives of parents with children in child care facilities, one representative of the Governors' Child Development Programs Advisory Committee, and one representative of the State Department of Social Services. The task force members shall be appointed by the Superintendent of Public Instruction.

The task force shall, by September 30, 1987, survey existing child health care training curricula, materials, and dissemination efforts, develop a child health care curriculum and materials to meet the intent of subdivision (a), and determine the most efficient cost-effective method of delivering this training in a readily accessible manner to licensed child care providers across the state, the feasibility of requiring this training as a condition of licensure for child day care facilities licensed as described in subdivision (a), reasonable time periods in which the training shall be acquired by persons who are in licensed facilities, how often child care providers shall update their training, the type of other coursework which may substitute for this training, and the feasibility of requiring this training for family day care operators.

(c) The State Department of Education may contract with an independent consultant to coordinate the efforts of this task force and shall provide secretarial support.

(d) The State Department of Education may contract with an independent consultant for the period of October 1, 1987, to March 31, 1988, to make the training program operational.

SEC. 85. 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 this act and 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 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) Any 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 requested by the licensing agency, or both.

SEC. 86. Section 1599.78 of the Health and Safety Code is amended to read:

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.

SEC. 87. 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 3.2 (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. 88. Section 1798.205 of the Health and Safety Code, as added by Chapter 1225 of the Statutes of 1987, is repealed.

SEC. 89. 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 or encumbrancer, 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) Ninety percent of the balance shall be distributed as follows:

(A) Eighty-five percent to the state or local or to the state and local law enforcement agencies that participated in the seizure, allocated between them to reflect the proportionate contribution of each agency.

(B) Fifteen percent to the prosecutorial agency which processes the forfeiture action.

(3) Ten percent of the balance for deposit in the Asset Forfeiture Distribution Fund, which is hereby created, and which shall be administered by the Office of Criminal Justice Planning.

(A) Notwithstanding Section 11340 of the Government Code, one

million five hundred thousand dollars ($1,500,000) is hereby continuously appropriated each fiscal year, as adjusted annually by the state and local implicit price deflator, to the State Department of Mental Health for the purposes of Chapter 6 (commencing with Section 5475) of Part 1 of Division 5 of the Welfare and Institutions Code. This subparagraph shall be funded prior to funding subparagraph (B).

(B) After the obligation specified in subparagraph (A) is satisfied, moneys in the Asset Forfeiture Distribution Fund are available for appropriation in the annual Budget Act for the following purposes:

(i) One million dollars ($1,000,000), in 1989 and 1990 only, to the Los Angeles County Office of Education to fund grants and administer the Gang Risk Intervention Pilot Program as established pursuant to Assembly Bill 3723 of the 1987–88 Regular Session of the Legislature. This clause (i) shall be funded prior to funding clauses (ii) and (iii). This clause (i) shall remain operative only until January 1, 1991, and as of that date is inoperative.

(ii) An amount not to exceed 5 percent of the Asset Forfeiture Distribution Fund to cover administrative costs incurred by the Office of Criminal Justice Planning. Notwithstanding Section 16305.7 of the Government Code, any interest earned or other increment derived from investments made from moneys in the Assets Forfeiture Distribution Fund shall be deposited in the Asset Forfeiture Distribution Fund. This clause (ii) shall be funded prior to funding clause (iii).

(iii) The balance, if any, remaining shall be distributed, as follows:

(I) Eighty-five percent for deposit in the Peace Officers' Training Fund as set forth in Section 13520 of the Penal Code. State agencies shall be entitled to allocations out of the funds generated by this section, in the same manner as provided in Section 13523 of the Penal Code, for drug related training provided to full-time regularly paid peace officers employed by the state, to the extent that there are funds in the Peace Officers' Training Fund generated by this section.

(II) Fifteen percent for financial assistance to provide for a statewide program of education, training, and research for local public prosecutors, which shall be administered by a private nonprofit organization composed of local prosecutors and which provides statewide education, training, and research.

(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 (3) 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 Offenders 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 pursuant to paragraph (3) 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. Funds so distributed shall be used by the law enforcement and prosecutorial agencies exclusively to support law enforcement and prosecutorial efforts of those 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 proceeds from forfeiture proceedings completed after January 1, 1989, shall be distributed in accordance with this section.

SEC. 90. Section 11573.5 of the Health and Safety Code is amended to read:

11573.5. (a) At the time of application for issuance of a temporary writ pursuant to Section 11573, if proof of the existence of the nuisance depends, in whole or part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, the court may issue orders to protect those witnesses, including, but not limited to, nondisclosure of the name, address, or any other information which may identify those witnesses.

(b) A temporary writ issued pursuant to Section 11573 may include closure of the premises pending trial when a prior writ does not result in the abatement of the nuisance. The duration of the writ shall be within the court's discretion. In no event shall the total period of closure pending trial exceed one year. Prior to ruling on a request for closure the court may order that some or all of the rent payments owing to the defendant be placed in an escrow account for a period of up to 90 days or until the nuisance is abated. If the court subsequently orders a closure of the premises, the money in the escrow account shall be used to pay for relocation assistance pursuant to subdivision (d). In ruling upon a request for closure, whether for a defined or undefined duration, the court shall consider all of the following factors:

(1) The extent and duration of the nuisance at the time of the request.

(2) Prior efforts by the defendant to comply with previous court orders to abate the nuisance.

(3) The nature and extent of any effect which the nuisance has upon other persons, such as residents or businesses.

(4) Any effect of prior orders, placing displaced residents' or

occupants' rent payments into an escrow account, upon the defendant's efforts to abate the nuisance.

(5) The effect of granting the request upon any resident or occupant of the premises who is not named in the action, including the availability of alternative housing or relocation assistance, the pendancy of any action to evict a resident or occupant, and any evidence of participation by a resident or occupant in the nuisance activity.

(c) In making an order of closure pursuant to this section, the court may order the premises vacated and may issue any other orders necessary to effectuate the closure. However, all tenants who may be affected by the order shall be provided reasonable notice and an opportunity to be heard at all hearings regarding the closure request prior to the issuance of any order.

(d) In making an order of closure pursuant to this section, the court shall order the defendant to provide relocation assistance to any tenant ordered to vacate the premises, provided the court determines that the tenant was not actively involved in the nuisance activity. The relocation assistance ordered to be paid by the defendant shall be in the amount necessary to cover moving costs, security deposits for utilities and comparable housing, adjustment in any lost rent and any other reasonable expenses the court may deem fair and reasonable as a result of the court's order.

(e) At the hearing to order closure pursuant to this section, the court may make the following orders with respect to any displaced tenant not actively involved in the nuisance:

(1) Priority for senior citizens, physically handicapped persons, or persons otherwise suffering from a permanent or temporary disability for claims against money for relocation assistance.

(2) Order the local agency seeking closure pursuant to this section to make reasonable attempts to seek additional sources of funds for relocation assistance to displaced tenants, if deemed necessary.

(3) Appoint a receiver to oversee the disbursement of relocation assistance funds, whose services shall be paid from the escrow fund.

(4) Where a defendant has paid relocation assistance pursuant to subdivision (d), the escrow account under subdivision (b) may be released to the defendant and no appointment under paragraph (3) shall be made.

(f) The remedies set forth pursuant to this section shall be in addition to any other existing remedies for nuisance abatement actions.

SEC. 91. The heading of Part 3 (commencing with Section 13800) of Division 12 of the Health and Safety Code is amended and renumbered to read:

PART 2.7. FIRE PROTECTION DISTRICT LAW OF 1987

SEC. 92. Section 13812 of the Health and Safety Code is amended to read:

13812. The Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code) shall govern any change of organization or reorganization of a district.

SEC. 93. Section 18070.6 of the Health and Safety Code, as added by Chapter 1285 of the Statutes of 1988, is repealed.

SEC. 94. 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 Officials.

(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. 95. Section 33334.12 of the Health and Safety Code is amended to read:

33334.12. (a) Upon failure of the agency to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within five years from the date the moneys become excess surplus, within the meaning defined in Section 33334.10, the agency shall disburse that excess surplus to the county housing authority or other housing authority operating within the agency's jurisdiction or another public agency exercising housing development powers within the territorial jurisdiction of the agency in accordance with subdivision (b). The housing authority shall utilize the moneys for the purposes and subject to the same restrictions as applicable to the redevelopment agency under this part, and for that purpose may exercise all of the powers of a housing authority under Part 2 (commencing with Section 34200) to the extent not inconsistent with these limitations.

Notwithstanding Section 34209 or any other provision of law, for the purpose of accepting a transfer of, and using, moneys pursuant to this section, the housing authority of a county may exercise its powers within the territorial jurisdiction of a city redevelopment agency in the county.

(b) The amount of excess surplus which shall be transferred to the housing authority because of failure of the agency to expend or encumber excess surplus within five years shall be the amount of the excess surplus that is not so expended or encumbered.

(c) Nothing in this section shall be construed to limit any authority a redevelopment agency may have under other provisions of this part to contract with a housing authority for increasing or improving the community's supply of low- and moderate-income housing.

(d) For purposes of this section:

(1) "Excess surplus" means any unexpended and unencumbered amount in an agency's Low and Moderate Income Housing Fund that exceeds the greater of five hundred thousand dollars ($500,000) or the aggregate amount deposited into the Low and Moderate Income Housing Fund pursuant to Sections 33334.2 and 33334.6 during the agency's preceding five fiscal years.

(2) Moneys shall be deemed encumbered if committed pursuant to a legally enforceable contract or agreement for expenditure for purposes specified in Section 33334.2 or 33334.3.

SEC. 96. 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.

(d) Notwithstanding any other provision of law, the agency may, on behalf of the Housing Insurance Fund, borrow moneys from the California Housing Finance Fund, or from any other state fund available by law for this purpose to meet a pledge or obligation for insurance reserves if insufficient funds therefor exist in the Housing Insurance Fund and if authorized by a resolution of the board. The agency may also, on behalf of the Housing Insurance Fund, borrow moneys from any other state fund, as may be authorized by law, in

order to create reserves in the insurance fund for loan or bond insurance as provided in this part and as authorized by board resolution.

SEC. 97. Section 1104.9 of the Insurance Code is amended to read:

1104.9. (a) (1) As used in this section, "qualified custodian" means: (A) commercial banks (as defined in Section 105 of the Financial Code), savings and loan associations (as defined in Section 5102 of the Financial Code), and trust companies (other than trust departments of title insurance companies), or any entity approved by the commissioner as a qualified custodian; (B) which is domiciled and has a principal place of business in this state; and (C) which either has a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The commissioner may consider, among other factors, evidence of the following in order to determine whether a custodian is financially secure for the purpose of this subdivision: (i) its obligations under an agreement approved by the commissioner pursuant to subdivision (c) are guaranteed by its parent holding company, (ii) its parent holding company has a net worth of at least one hundred million dollars ($100,000,000), or (iii) it is a member of a holding company system with a net worth of at least one hundred million dollars ($100,000,000).

(2) As used in this section, "qualified depository" means an entity which is located in this state or a reciprocal state and is (A) a depository that provides for the long-term immobilization of securities or a clearing corporation that is also a depository, and which in either case has been approved by or registered with the Securities and Exchange Commission, (B) a Federal Reserve bank, or (C) an entity approved by the commissioner as a qualified depository. A "qualified depository" may also include an entity which is located outside the United States, which entity shall be a securities depository and clearing agency, incorporated or organized under the laws of a country other than the United States, which operates a transnational system for securities or equivalent book entries (specifically Euroclear and Cedel, or successors to all or substantially all of their operations).

(3) As used in this section, "qualified subcustodian" means an entity located in this state or a reciprocal state (A) which holds securities of the domestic insurer, and maintains an account through which the securities are held, in this state or a reciprocal state and (B) which has a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure. The qualified subcustodian shall be: (A) a commercial bank, a savings and loan association, or a trust company (other than trust departments of title insurance companies); (B) a subsidiary of a qualified custodian; or (C) any entity approved by the commissioner as a qualified subcustodian. The commissioner may consider, among other factors, evidence of

the following in order to determine whether a subcustodian is financially secure for the purpose of this subdivision: (i) its obligations are guaranteed by its parent company, (ii) its parent holding company has a net worth of at least one hundred million dollars ($100,000,000), or (iii) it is a member of a holding company system with a net worth of at least one hundred million dollars ($100,000,000). A "qualified subcustodian" may also include an entity which is located outside the United States, which is used by the domestic insurer for the purpose of obtaining access to a qualified depository located outside the United States. The qualified foreign subcustodian shall have a net worth of at least one hundred million dollars ($100,000,000) or is able to demonstrate to the satisfaction of the commissioner that it is financially secure, and shall be: (A) a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated by that country's government or an agency thereof, and that has shareholders' equity in excess of two hundred million dollars ($200,000,000), whether in United States dollars or the equivalent of United States dollars, as of the close of its most recently completed fiscal year; (B) a majority-owned direct or indirect subsidiary of a qualified United States bank or bank holding company, which subsidiary is incorporated or organized under the laws of a country other than the United States and has shareholders' equity in excess of one hundred million dollars ($100,000,000), whether in United States dollars or the equivalent of United States dollars, as of the close of its most recently completed fiscal year.

(4) As used in this section, "subsidiary" means: (A) an entity all of whose voting securities (other than director qualifying shares, if any) are owned, directly or indirectly, by a qualified custodian; or (B) any affiliated entity approved by the commissioner as a subsidiary of a qualified custodian. For the purpose of this section, an affiliated entity means an entity that (A) controls or is controlled, either directly or indirectly or through one or more intermediaries by a qualified custodian or (B) is under the common control, directly or indirectly, as or with a qualified custodian.

(5) As used in this section, "entity approved by the commissioner as a qualified custodian," "entity approved by the commissioner as a qualified depository," "entity approved by the commissioner as a qualified subcustodian," and "entity approved by the commissioner as a subsidiary of a qualified custodian" mean those entities which meet the conditions or standards established by the commissioner. The commissioner shall charge and collect in advance a one-time fee of one thousand five hundred dollars ($1,500) to review an application for approval of any entity pursuant to this section.

(6) As used in this section, "reciprocal state" has the same meaning as in subdivision (f) of Section 1064.1.

(7) As used in this section, "moneys" means cash held incidental to securities transactions occurring in the ordinary course of business with respect to securities held pursuant to the custodial agreements

under this section.

(8) (A) Except as provided in subparagraph (B), as used in this section, "insurer," "domestic insurer," and "domestic admitted insurer" mean any insurer, other than a domestic life insurer, which is incorporated or which has its principal place of business in this state. Except as provided in subparagraph (B), no portion of this section shall apply to domestic life insurers, nor shall this section affect the interpretation of any other portion of this code with respect to domestic life insurers, nor is it intended to create a precedent for the application of its provisions to those insurers. However, the exclusion of domestic life insurers from this section shall not be construed to diminish the commissioner's existing authority over those insurers under any other provision of this code.

(B) Domestic life insurers which are wholly owned by any insurer other than a domestic life insurer or are part of an insurance holding company system whose other insurer affiliates are not domestic life insurers may elect to be subject to this section by affirmatively stating that election in the statement otherwise required to be filed by that system pursuant to Section 1215.4.

(b) Notwithstanding Section 1104.1, a domestic admitted insurer may maintain its securities and moneys in a reciprocal state, subject to the requirements of this section, through a custodian account located in California in or with a qualified custodian, and that qualified custodian may maintain those securities or moneys in a qualified depository or qualified subcustodian, either or both of which may be located in a reciprocal state. In addition, a domestic insurer which has foreign investments or any other investments which require delivery outside of the United States upon sale or maturity that qualify under Section 1240, 1241, 10506, or any other provision of this code may maintain those securities or moneys in or with a qualified depository located in a jurisdiction outside the United States. However, the aggregate amount of general account investments so deposited shall not exceed the lesser of 5 percent of the total admitted assets of the insurer or 25 percent of the excess of admitted assets over the sum of paid up capital, liabilities, and surplus required by Section 700.02. The percentage or dollar value of admitted assets and paid up capital and liabilities shall be determined by the insurer's last preceding annual statement of conditions and affairs made as of the preceding December 31 which has been filed with the commissioner pursuant to law. No broker or agent, as defined in the Federal Securities Exchange Act of 1934 (15 U.S.C.A. Sec. 78c et seq.), may serve as a qualified custodian, qualified subcustodian, or qualified depository under this section. However, no otherwise qualified custodian or subcustodian shall be disqualified on account of its activities as a broker or dealer, as so defined, when the activities are incidental to its custodial or other business.

(c) No securities shall be deposited in or with a qualified custodian, qualified depository, or qualified subcustodian except as authorized by an agreement between the insurer and the qualified

custodian, which agreement is satisfactory to and has been approved by the commissioner. The agreement shall require that the securities be held by the qualified custodian for the benefit of the insurer and that the books and records of the qualified custodian shall so designate. The agreement shall further require that beneficial title to the securities shall remain in the insurer and shall require that the qualified subcustodian and qualified depository be the agents of the qualified custodian. The agreement shall also specifically require that the qualified custodian shall exercise the standard of care of a professional custodian engaged in the banking or trust company industry and having professional expertise in financial and securities processing transactions and custody would observe in these affairs. This section shall not affect the burden of proof under applicable law with respect to the assertion of liability in any claim, action, or dispute alleging any breach of, or failure to observe, that standard of care.

(d) No agreement between the qualified custodian and the insurer shall be approved by the commissioner unless the qualified custodian agrees therein to comply with this section. Except when the agreement is submitted in conjunction with an application for an original certificate of authority or variable contract qualification, a fee of five hundred dollars ($500) shall be paid to the commissioner at the time of filing the agreement for approval. However, no fee shall be required if the form of the agreement has been previously submitted for approval and approved by the commissioner as certified by the insurer and qualified custodian submitting the agreement to the commissioner. The agreement shall be deemed approved unless, within 60 days after receipt by the commissioner of that agreement and any required filing fee, the commissioner has disapproved the agreement in writing citing specific reasons for disapproval.

(e) Notwithstanding the maintenance of securities with an out-of-state qualified depository or qualified subcustodian pursuant to agreement, if the commissioner has reasonable cause to believe that the domestic insurer (1) is conducting its business and affairs in such a manner as to threaten to render it insolvent, or (2) is in a hazardous condition or is conducting its business and affairs in a manner which is hazardous to its policyholders, creditors, or the public, or (3) has committed or is committing or has engaged or is engaging in any act which would constitute grounds for rendering it subject to conservation or liquidation proceedings, or if the commissioner determines that irreparable loss and injury to the property and business of the domestic insurer has occurred or may occur unless the commissioner acts immediately, then the commissioner may, without hearing, order the insurer and the qualified custodian promptly to effect the transfer of the securities back to a qualified custodian, qualified subcustodian, or qualified depository located in this state from any qualified depository or qualified subcustodian located outside of this state (the transfer

order). Upon receipt of the transfer order, the qualified custodian shall promptly effect the return of the securities. Notwithstanding the pendency of any hearing or action provided for in subdivision (f), the transfer order shall be complied with by those persons subject to that order. Any challenge to the validity of the transfer order shall be made in accordance with subdivision (f). It shall be the responsibility of both the insurer and the qualified custodian to oversee that compliance with the transfer order is completed as expeditiously as possible. Upon receipt of a transfer order, there shall be no trading of the securities without specific instructions from the commissioner until the securities are received in this state, except to the extent trading transactions are in process on the day the transfer order is received by the insurer and the failure to complete the trade may result in loss to the insurer's account. Issuance of a transfer order shall not affect the qualified custodian's liabilities with regard to the securities which are the subject of the order.

(f) At the same time the transfer order is served, the commissioner shall issue and also serve upon the insurer a notice of hearing to be held at a time and place fixed therein which shall not be less than 20 nor more than 45 days after the service thereof. Upon request of the insurer and agreement of the department, the hearing may be held within a shorter time but in no event less than 10 days after the service of the notice of hearing. The transfer order and notice of hearing may be served by certified mail, express mail, messenger, telegram, or any other means calculated to give prompt actual notice to (1) the California office of the insurer designated in the agreement, its home office as shown on its most recently filed annual or quarterly statement, or its California agent for service of process; and (2) the California office of the qualified custodian designated in the agreement. If, as a result of the hearing, any of the statements as to conduct, conditions, or grounds for the transfer order are found to be true, or if other conditions or grounds are discovered or become known at the hearing and are found to be true, the commissioner shall affirm the transfer order and may make additional order or orders, pertaining to the transfer order, as may be reasonably necessary.

The insurer subject to the transfer order, shall be entitled to judicial review in the state of the commissioner's order issued as a result of the hearing.

Alternatively, at any time prior to the commencement of the hearing on the transfer order, the insurer may waive the hearing and have judicial review in this state of the transfer order by petition for writ of mandate and declaratory relief without first exhausting administrative remedies or procedures. In that event the insurer shall not be entitled to any extraordinary remedies prior to trial.

No person other than the insurer shall have standing at the hearing by the commissioner or for any judicial review of the transfer order.

SEC. 98. The heading of Article 5 (commencing with Section 10190) of Chapter 1 of Part 2 of Division 2 of the Insurance Code is

amended to read:

Article 5. Exemptions and Miscellaneous Provisions Relating to Insurance Contracts

SEC. 99. Section 11580.09 of the Insurance Code, as added by Chapter 201 of the Statutes of 1987, is amended and renumbered to read:

11580.010. (a) Any automobile liability insurer that is responsible for coverage for ordinary, reasonable, and necessary medical transportation services provided to an insured, or on behalf of an insured, to a valid claimant is liable for those charges to the person performing those services. The insurer may discharge this obligation by making payment to the person performing the medical transportation services or to the insured or on behalf of the insured to the claimant.

(b) Any insured or claimant who has received payment, which includes charges for medical transportation services, from an insurer for a loss relating to a vehicle is liable for those charges to the person performing those services.

SEC. 100. 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 the 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) or paragraph (3), (1) delete the provision covering damage caused by an uninsured motor vehicle completely, or (2) delete the coverage when a motor vehicle is operated by a natural person or persons designated by name, or (3) agree to provide the 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 of these 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 require that uninsured motorist coverage 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) to delete the provision covering damage caused by an uninsured motor vehicle completely or delete the coverage when a motor vehicle is operated by a natural person or persons designated by name 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. Those provisions also permit the insurer and the applicant to delete the coverage completely or to delete the coverage when a motor vehicle is operated by a natural person or persons designated by name. Uninsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, which the person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to the insured 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.

(3) The agreement specified in paragraph (1) to provide coverage in an amount less than that required by subdivision (m) 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. Those provisions also permit the insurer and the applicant to agree to provide the coverage in an amount less then 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 the person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to the insured 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 this paragraph. However, it shall be presumed that an application for a policy of bodily injury liability insurance containing uninsured motorist coverage in an amount less than that required by subdivision (m), signed by the named insured and approved by the insurer, with a policy effective date after January 1, 1985, shall be a valid agreement as to the amount of uninsured motorist coverage to be provided.

(b) As used in subdivision (a), "bodily injury" includes sickness or disease, including death, resulting therefrom; "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 subdivision (a); as used in subdivision (a) if the named insured is an individual "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 subdivision (a), if the named insured is an entity other than an individual, "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, "individual" shall not include persons doing business as corporations, partnerships, or associations. As used in this subdivision "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 "insured motor vehicle" shall not include any automobile while used as a public or livery conveyance. As used in this section, "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 the applicable insurance or bond but the company writing the insurance or bond 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 has 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 to the sheriff of the county where the accident occurred or to the local headquarters of the California Highway Patrol, and has 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, "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, "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 the 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:

(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.

(8) To bodily injury of the insured while occupying a motor vehicle rented or leased to the insured for public or livery purposes.

(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 the damages shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the 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.

(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. 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 proper court to which application is first made by either the insured or the insurer under 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 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) Paragraph (4) of subdivision (a) of Section 2019 of the Code of Civil Procedure is not 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 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 limits 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 the claim was paid against any person legally liable for the injury or death to the extent that payment was made. The 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 the 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 the 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 one of the following actions have been taken 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.

(2) Agreement as to the amount due under the policy has been concluded.

(3) The insured has formally instituted arbitration proceedings.

(j) Notwithstanding 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 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 subdivision (i), any insurer whose insured has made a claim under his or her uninsured motorist coverage, and the 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 the 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 the payment 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 the 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 the 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.

SEC. 101. Section 148.6 of the Labor Code is amended to read:

148.6. A decision of the appeals board is binding on the director and the Division of Occupational Safety and Health with respect to the parties involved in the particular appeal. The director shall have the right to seek judicial review of an appeals board decision irrespective of whether or not he or she appeared or participated in the appeal to the appeals board or its hearing officer.

SEC. 102. Section 3366 of the Labor Code is amended to read:

3366. (a) For the purposes of this division, each person engaged in the performance of active law enforcement service as part of the posse comitatus or power of the county, and each person (other than an independent contractor or an employee of an independent contractor) engaged in assisting any peace officer in active law enforcement service at the request of the peace officer, is deemed to be an employee of the public entity that he or she is serving or assisting in the enforcement of the law, and is entitled to receive compensation from the public entity in accordance with this division.

(b) Nothing in this section shall be construed to provide workers' compensation benefits to any law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

SEC. 103. Section 3367 of the Labor Code is amended to read:

3367. (a) For purposes of this division any person voluntarily rendering technical assistance to a public entity to prevent a fire, explosion, or other hazardous occurrence, at the request of a duly authorized fire or law enforcement officer of that public entity is deemed an employee of the public entity to whom the technical assistance was rendered, and is entitled to receive compensation benefits in accordance with this division. Rendering technical assistance shall include the time that person is traveling to, or returning from, the location of the potentially hazardous condition for which he or she has been requested to volunteer his or her assistance.

(b) Nothing in this section shall be construed to provide workers' compensation benefits to any law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and who is deputized to work under the supervision of a California peace officer pursuant to paragraph (4) of subdivision (a) of Section 832.6 of the Penal Code.

SEC. 104. Section 116 of the Penal Code is amended to read:

116. Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the names in the jury box or otherwise, or extracts any name therefrom, or destroys the jury box or any of the pieces of paper containing the names of jurors, or mutilates or defaces the names so that they cannot be read, or changes the names on the pieces of paper, except in cases allowed by law, is guilty of a felony.

SEC. 105. Section 177 of the Penal Code is amended to read:

177. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

SEC. 106. Section 203 of the Penal Code is amended to read:

203. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem.

SEC. 107 Section 269 of the Penal Code is repealed.

SEC. 108. Section 316 of the Penal Code is amended to read:

316. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

SEC. 109. Section 371 of the Penal Code is amended to read:

371. An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

SEC. 110. Section 629.02 of the Penal Code is amended to read:

629.02. Upon application made under Section 629, the judge may enter an ex parte order, as requested or modified, authorizing interception of wire communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines, on the basis of the facts submitted by the applicant, all of the following:

(a) There is probable cause to believe that an individual is committing, has committed, or is about to commit, one of the following offenses:

(1) Importation, possession for sale, transportation, manufacture, or sale of controlled substances in violation of Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their analogs where the substance exceeds 10 gallons by liquid volume or three pounds of solid substance by weight.

(2) Conspiracy to commit any of the above-mentioned crimes.

(b) There is probable cause to believe that particular communications concerning the illegal activities will be obtained through that interception.

(c) There is probable cause to believe that the facilities from which, or the place where, the wire communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person whose communications are to be intercepted.

(d) Normal investigative procedures have been tried and have failed or reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

SEC. 112. Section 844 of the Penal Code is amended to read:

844. To make an arrest, a private person, if the offense is a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing the person to be, after having demanded admittance and explained the purpose for which admittance is desired.

SEC. 114. Section 1203.1i of the Penal Code, as added by Chapter 713 of the Statutes of 1987, is amended and renumbered to read:

1203.1*l*. 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.

SEC. 115. Section 1357 of the Penal Code is amended to read:

1357. The commissioner, unless otherwise specially directed, may execute the commission in the following order:

(a) He or she shall publicly administer an oath to the witness that his or her answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.

(b) He or she shall cause the examination of the witness to be reduced to writing and subscribed by the witness.

(c) He or she shall write the answers of the witness as near as possible in the language in which he or she gives them, and read to the witness each answer as it is taken down, and correct or add to it until it conforms to what he or she declares is the truth.

(d) If the witness declines to answer a question, that fact, with the reason assigned by him or her for declining, shall be stated.

(e) If any papers or documents are produced before him or her and proved by the witness, they, or copies of them, shall be annexed to the deposition subscribed by the witness and certified by the commissioner

(f) The commissioner shall subscribe his or her name to each sheet of the deposition, and annex the deposition, with the papers and documents proved by the witness, or copies thereof, to the commission, and shall close it up under seal, and address it as directed by the indorsement thereon.

(g) If there is a direction on the commission to return it by mail, the commissioner shall immediately deposit it in the nearest post office. If any other direction is made by the written consent of the parties, or by the court or judge, on the commission, as to its return, the commissioner shall comply with the direction.

A copy of this section shall be annexed to the commission.

SEC. 116. Section 1387.1 of the Penal Code, as added by Chapter 1056 of the Statutes of 1987, is repealed.

SEC. 117. Section 1445 of the Penal Code is amended to read:

1445. When the defendant pleads guilty, or is convicted, either by the court, or by a jury, the court shall render judgment thereon of fine or imprisonment, or both, as the case may be.

SEC. 118. Section 1524.1 of the Penal Code is amended to read:

1524.1. (a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the AIDS virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 1.11 (commencing with Section 199.20) of Part 1 of Division 1 of the Health and Safety Code.

(b) (1) Notwithstanding the provisions of Chapter 1.11 (commencing with Section 199.20) of Part 1 of Division 1 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood with any HIV test, as defined in Section 26 of the Health and Safety Code only under the following circumstances: When the court finds, upon the conclusion of the hearing described in paragraph (2), or in those cases in which a preliminary hearing is not required to be held, the court also finds that there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(2) Prior to the issuance of a search warrant pursuant to paragraph (1), the court, where applicable and at the conclusion of the preliminary examination if the defendant is ordered to answer pursuant to Section 872, shall conduct a hearing at which both the victim and the defendant have the right to be present. During the hearing only affidavits, counter affidavits, and medical reports regarding the facts which support or rebut the issuance of a search warrant under paragraph (1) shall be admissible.

(c) (1) In all cases in which the person has been charged by complaint, information, or indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the commission of a crime, the prosecutor shall advise the victim of his or her right to make this request. To assist the victim of the crime to determine

whether he or she should make this request, the prosecutor shall refer the victim to the local health officer for prerequest counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether he or she wants to request that the accused be tested, and to help the victim decide whether he or she wants to be tested.

(2) The Department of Justice, in cooperation with the California District Attorneys Association, shall prepare a form to be used in providing victims with the notice required by paragraph (1).

(d) If the victim decides to request HIV testing of the accused, the victim shall request the issuance of a search warrant, as described in subdivision (b).

Neither the failure of a prosecutor to refer or advise the victim as provided in this subdivision, nor the failure or refusal by the victim to seek or obtain counseling, shall be considered by the court in ruling on the victim's request.

(e) The local health officer shall make provision for administering all HIV tests ordered pursuant to subdivision (b).

(f) Any blood tested pursuant to subdivision (b) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.

(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality subject to the disclosure authorized by subdivisions (g) and (i).

(i) Any victim who receives information from the health officer pursuant to subdivision (g) may disclose the test results as the victim deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.

(k) The results of any blood tested pursuant to subdivision (b) shall not be used in any criminal proceeding as evidence of either guilt or innocence.

SEC. 119. Section 3417 of the Penal Code is amended to read:

3417. (a) Subject to reasonable rules and regulations adopted 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:

(1) 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.

(2) 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."

(3) 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.

(b) The Department of Corrections shall deny placement in the community treatment program if it determines that an inmate would pose an unreasonable risk to the public, or if any one of the following factors exist, except in unusual circumstances or if mitigating circumstances exist, including, but not limited to, the remoteness in time of the commission of the offense:

(1) The inmate has been convicted of any of the following:

(A) A sex offense listed in Section 667.6.

(B) A sex offense requiring registration pursuant to Section 290.

(C) A violent offense listed in subdivision (c) of Section 667.5.

(D) Arson as defined in Sections 450 to 455, inclusive.

(E) The unlawful sale or possession for sale, manufacture, or transportation of controlled substances as defined in Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code, if large scale for profit as defined by the department.

(2) There is probability the inmate may abscond from the program as evidenced by any of the following:

(A) A conviction of escape, of aiding another person to escape, or of an attempt to escape from a jail or prison.

(B) The presence of an active detainer from a law enforcement agency, unless the detainer is based solely upon warrants issued for failure to appear on misdemeanor Vehicle Code violations.

(3) It is probable the inmate's conduct in a community facility will be adverse to herself or other participants in the program, as determined by the Director of Corrections or as evidenced by any of the following:

(A) The inmate's removal from a community program which resulted from violation of state laws, rules, or regulations governing Department of Corrections inmates.

(B) A finding of the inmate's guilt of a serious rule violation, as defined by the Director of Corrections, which resulted in a credit loss

on one occasion of 91 or more days or in a credit loss on more than one occasion of 31 days or more and the credit has not been restored.

(C) A current written opinion of a staff physician or psychiatrist that the inmate's medical or psychiatric condition is likely to cause an adverse effect upon the inmate or upon other persons if the inmate is placed in the program.

(c) Nothing in this section shall be interpreted to limit the discretion of the Director of Corrections to deny or approve placement when subdivision (b) does not apply.

(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.

(e) The department may, in its discretion, admit a pregnant inmate to the program prior to the birth of the child if it determines that the admission would otherwise comply with this chapter, and there is space available.

SEC. 120. 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 or to supervise or provide consultation on these 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, the following persons are exempt from the requirements of subdivision (a), so long as they continue in employment in the same class and in the same department:

(1) 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.

(2) Persons employed on January 1, 1989, to supervise or provide consultation on the diagnostic or treatment services including persons on authorized leave but not including intermittent personnel.

(c) 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, the 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. 121. Section 7007 of the Penal Code is repealed.

SEC. 122. Section 7510 of the Penal Code is amended to read:

7510. (a) A law enforcement employee who believes that he or

she came into contact with bodily fluids of either an inmate of a correctional institution, a person not in a correctional institution who has been arrested or taken into custody whether or not the person has been charged with a crime, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, or a person on probation or parole due to conviction of a crime, shall report the incident through the completion of a form provided by the State Department of Health Services. The form shall be directed to the chief medical officer, as defined in subdivision (c), who serves the applicable law enforcement agency. Utilizing this form the law enforcement employee may request an HIV test of the person who is the subject of the report. The forms may be combined with regular incident reports or other forms used by the correctional institution or law enforcement agency.

(b) The report required by subdivision (a) shall be submitted by the end of the law enforcement employee's shift during which the incident occurred, or if not practicable, as soon as possible, but no longer than two days after the incident, except that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists. The report shall include names of witnesses to the incident, names of persons involved in the incident, and if feasible, any written statements from these parties. The law enforcement employee shall assist in the investigation of the incident, as requested by the chief medical officer.

(c) For purposes of this section and Section 7511, "chief medical officer" means:

(1) In the case of a report filed by a staff member of a state prison, the chief medical officer of that facility.

(2) In the case of a parole officer filing a report, the chief medical officer of the nearest state prison.

(3) In the case of a report filed by an employee of the California Youth Authority, the chief medical officer of the facility.

(4) In the case of a report filed against a subject who is an inmate of a city or county jail or a county- or city-operated juvenile facility, or who has been arrested or taken into custody whether or not the person has been charged with a crime, but who is not in a correctional facility, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, the county health officer of the county in which the individual is jailed or charged with the crime.

(5) In the case of a report filed by a probation officer, the county health officer of the county in which the probation officer is employed.

(6) In any instance where the chief medical officer, as determined pursuant to this subdivision, is not a physician or surgeon, the chief medical officer shall designate a physician or surgeon to perform his or her duties under this title.

SEC. 123. Section 12077 of the Penal Code, as added by Chapter 1180 of the Statutes of 1988, is repealed. The repeal made by this section shall not affect the existence or validity of Section 12077, as added by Chapter 1394 of the Statutes of 1988.

SEC. 124. Section 13826.5 of the Penal Code is amended to read:

13826.5. County probation departments receiving funding under this chapter shall strictly enforce court-ordered conditions of probation for gang members.

(a) County probation departments supported under the Gang Violence Suppression Program shall implement the following activities:

(1) A Gang Violence Intensive Supervision Unit dealing with gang members shall be established.

(2) Criteria used to determine which probationer shall be assigned to the Gang Violence Intensive Supervision Unit shall be approved by the district attorney having a Gang Violence Prosecution Unit described in Section 13826.2.

(3) Probationers whose cases are assigned to the intensive supervision unit shall be informed of what types of behavior are prescribed or forbidden. The notice shall be provided in both oral and written form.

(4) Probationers whose cases are assigned to the intensive supervision unit shall be informed, in writing, that all court-ordered conditions of probation will be strictly enforced.

(5) Deputy probation officers in the intensive supervision unit shall have reduced probationer caseloads and shall coordinate their supervision efforts with law enforcement and prosecution personnel. The coordination shall include informing law enforcement and prosecution personnel of the conditions set for probationers and of the strict enforcement procedures to be implemented.

(6) Deputy probation officers in the intensive supervision unit shall coordinate with the district attorney in ensuring that court-ordered conditions of probation are consistently enforced.

(7) Intensive supervision unit deputy probation officers shall coordinate, whenever feasible, with community-based organizations in seeking to ensure that probationers adhere to their court-ordered conditions.

(b) County probation departments may implement the California TEAM (Together Each Achieves More) Sports Camp Program, as described in Article 23.5 (commencing with Section 875) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code.

SEC. 125. Section 1835 of the Probate Code is amended to read:

1835. (a) Every county, either through the appropriate court or the office of the public conservator, shall provide all private conservators with written information concerning a conservator's rights, duties, limitations, and responsibilities pursuant to this part.

(b) The information to be provided shall include, but need not be limited to, the following:

(1) The rights, duties, limitations, and responsibilities of a

conservator.

(2) The rights of a conservatee.

(3) How to assess the needs of the conservatee.

(4) How to use community-based services to meet the needs of the conservatee.

(5) How to ensure that the conservatee is provided with the least restrictive possible environment.

(6) The court procedures and processes relevant to conservatorships.

(7) The procedures for inventory and appraisement, and the filing of accountings.

(c) An information package shall be developed by the Judicial Council, after consultation with the following organizations or individuals:

(1) The California State Association of Public Administrators, Public Guardians, and Public Conservators, or other comparable organizations.

(2) The State Bar.

(3) Individuals or organizations, approved by the Judicial Council, who represent court investigators, specialists with experience in performing assessments and coordinating community-based services, and legal services programs for the elderly.

(d) The failure of any court, public guardian, public officer, or public agency, or any employee or agent thereof, to provide information to a conservator as required by this section shall not operate to (1) relieve the conservator of any of his or her duties as required by this part, or (2) make the court, public guardian, public officer, or public agency, or the employee or agent thereof, liable, in either a personal or official capacity, for any damage to a conservatee, conservator, the conservatorship of a person or an estate, or any other person or entity.

The information package shall be made available to individual counties. The Judicial Council shall periodically update the information package when changes in the law warrant revision. The revisions shall be provided to individual counties.

(e) To cover the costs of printing and mailing, a county may charge each private conservator a fee for providing the written information required by this section, not to exceed ten dollars ($10).

SEC. 126. Article 3 (commencing with Section 560) of Chapter 1 of Division 1 of the Public Resources Code, as added by Chapter 1198 of the Statutes of 1980, is repealed. The repeal made by this section shall not affect the existence or validity of Article 3 (commencing with Section 560) of Chapter 1 of Division 1 of the Public Resources Code, as added by Chapter 1199 of the Statutes of 1980.

SEC. 127. Section 5008.5 of the Public Resources Code is amended to read:

5008.5. In any prosecution charging a violation within any unit of the state park system of the rules and regulations of the department, Section 655.2 or Chapter 5 (commencing with Section 650) of

Division 3 of the Harbors and Navigation Code, or the rules and regulations of the Department of Boating and Waterways, proof by the people of the State of California that the vehicle or vessel described in the complaint was parked or placed in violation of any provision of these statutes or rules and regulations together with proof that the defendant named in the complaint was, at the time of the parking or placing, the registered owner of the vehicle or vessel, shall constitute prima facie evidence that the registered owner of the vehicle or vessel was the person who parked or placed the vehicle or vessel at the point where, and for the time during which, the violation occurred, but the proof that a person is the registered owner of a vehicle or vessel is not prima facie evidence that the person has violated any other provision of law. The above provisions shall apply only when there has been compliance with the procedure required by Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code. Proof of a written lease of, or rental agreement for, a particular vehicle or vessel described in the complaint, on the date and time of the violation, which lease or rental agreement includes the name and address of the person to whom the vehicle or vessel is leased or rented, shall rebut the prima facie evidence that the registered owner was the person who parked or placed the vehicle at the time and place where the violation occurred.

Any charge under this section shall be dismissed when the person charged has made a bona fide sale or transfer of the vehicle or vessel and has delivered possession thereof to the purchaser and has complied with the requirements of subdivision (a) or (b) of Section 5602 of the Vehicle Code or with Section 710 of the Harbors and Navigation Code prior to the date of the alleged violation and has advised the court of the name and address of the purchaser.

SEC. 128. Section 5015.5 of the Public Resources Code is amended to read:

5015.5. The Baldwin Hills State Recreation Area is hereby designated and shall be known as the Kenneth Hahn State Recreation Area.

The department shall erect appropriate signs to reflect the designation made by this section and shall cause all directories and other publications concerning the state park system to reflect the designation as the publications are periodically revised.

SEC. 129. Section 14580 of the Public Resources Code is amended to read:

14580. (a) The department shall deposit all amounts paid as redemption values by distributors pursuant to Section 14574, processing fees paid pursuant to Section 14575, civil penalties or fines paid pursuant to Section 14541 or subdivision (c) of Section 14591, and all other revenues received into the California Beverage Container Recycling Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the California Beverage Container Recycling Fund

are hereby continuously appropriated to the department for expenditure without regard to fiscal years for all of the following purposes:

(1) The payment of redemption values to processors pursuant to Section 14573.

(2) Except as provided in subdivision (b), for costs necessary to the administration of this division.

(3) For a reserve for contingencies in an amount not greater than an amount equal to one-fourth of the total amount paid to processors pursuant to Section 14573 during the preceding calendar year, plus any interest earned on that amount.

(b) The moneys in the fund may be expended by the department for the administration of this division only upon appropriation by the Legislature in the annual Budget Act.

(c) After all of the expenditures pursuant to subdivisions (a) and (b) have been made, the balance remaining in the fund shall be deposited in the Redemption Bonus Account, which is hereby created as a subaccount in the California Beverage Container Recycling Fund. Notwithstanding Section 13340 of the Government Code, the moneys in the Redemption Bonus Account are hereby continuously appropriated to the department, without regard to fiscal years, for the purposes specified in Section 14581.

SEC. 130. Section 460.5 of the Public Utilities Code, as added by Chapter 794 of the Statutes of 1988, is amended and renumbered to read:

460.3. (a) The commission shall prohibit any passenger stage corporation from charging any fare to, or imposing any other charge on, any physically disabled or handicapped passenger which is more than the fare or charge imposed on a passenger who is not physically disabled or handicapped for the same transportation or service, and shall approve no schedule of fares or charges which is discriminatory under this section.

(b) Any special provision made by a passenger stage corporation for assisting a physically disabled or handicapped person in using its transportation service is, for purposes of subdivision (a), a part of the same transportation or service offered to passengers who are not physically disabled or handicapped, and is not a separate service for which an additional charge may be made. Nothing in this section, however, requires a passenger stage corporation to furnish any equipment or assistance for a physically disabled or handicapped person different from or in addition to that which may be required under any other law.

SEC. 131. Section 777.1 of the Public Utilities Code is amended to read:

777.1. (a) Whenever an electrical, gas, heat, or water corporation furnishes residential service to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structures in a labor camp, as defined in Section 17008 of the Health and Safety Code,

where the owner, manager, or operator is listed by the corporation as the customer of record, the corporation shall make every good faith effort to inform the residential occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each residential unit, the corporation shall post two copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice shall further inform the residential occupants that they have the right to become customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account. The notice also shall specify, in plain language, what the residential occupants are required to do in order to prevent the termination or reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the corporation who can assist the residential occupants in continuing service; and the address and telephone number of a legal services project, as defined in Section 6213 of the Business and Professions Code, which has been recommended by the local county bar association. The notice shall be in English and, to the extent practical, in any other language that the corporation determines is the primary language spoken by a significant number of the residential occupants.

(b) The corporation is not required to make service available to the residential occupants unless each residential occupant or a representative of the residential occupants agrees to the terms and conditions of service and meets the requirements of law and the corporation's rules and tariffs. However, if one or more of the residential occupants or the representative of the residential occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the corporation, or if there is a physical means, legally available to the corporation, of selectively terminating service to those residential occupants who have not met the requirements of the corporation's rules and tariffs or for whom the representative of the residential occupants is not responsible, the corporation shall make service available to those residential occupants who have met those requirements or on whose behalf those requirements have been met.

(c) Where prior service for a period of time or other demonstration of credit worthiness is a condition for establishing credit with the corporation, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the corporation is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the corporation pursuant to this section whose periodic payments, such as rental payments, include charges for residential electrical, gas, heat, or water service, where those charges are not separately stated, may deduct from the periodic payment each payment period all

reasonable charges paid to the corporation for those services during the preceding payment period.

(e) Whenever a corporation furnishes residential service subject to subdivision (a), the corporation may not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the corporation of a customer dispute or complaint.

(2) When the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other person or corporation or when the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, or water corporation demanding payment therefor.

(4) When a delinquent account relates to another property owned, managed, or operated by the customer.

(5) When a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public

(f) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the residential occupant or the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney's fees of the residential occupants, the representative of the residential occupants, or each of them, incurred in the enforcement of this section, including, but not limited to, enforcement of a lien.

(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney's fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no

recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to subdivision (f) or (g) shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service. In the event of a wrongful termination by the corporation, the corporation shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs of enforcement of this section, including, but not limited to, reasonable attorney's fees, if the residential occupants or the representative of the residential occupants made a good faith effort to have the service continued without interruption.

(i) The commission shall adopt rules and orders necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to residential occupants is not terminated due to nonpayment by the customer unless the corporation has made every reasonable effort to continue service to the residential occupants. The rules and orders shall include, but are not limited to, reasonable penalties for a violation of this section, guidelines for assistance to residents in the enforcement of this section, and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and boldface type, and comprehensive instructions to ensure full notice to the resident.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of residential public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a tenant's association.

(*l*) For purposes of this section, "representative of the residential occupants" does not include a tenants' association.

SEC. 132. Section 1405.1 of the Public Utilities Code is amended to read:

1405.1. With respect to water corporations and water companies, the following procedures shall apply:

(a) Upon the filing of the petition, the commission shall make its order to show cause. The order shall specify the nature of the proceeding, contain a general description of the lands, property, and rights which petitioner desires to acquire by condemnation or otherwise, and direct the owners and claimants named in the petition, who shall also be named in the order, to appear before the

commission at a time and place specified in the order and to show cause, if any they have, why the commission should not proceed to hear the petition and to fix the just compensation to be paid for the lands, property, and rights.

The order shall direct the executive director of the commission to serve or cause to be served upon each owner and claimant a copy of the order certified under the seal of the commission to which shall be attached a copy of the petition.

(b) In response to the order to show cause, in response to a petition of the first class, as specified in Section 1403, the respondent public utility, or the owners of more than one-half interest in the public utility, may present the commission with a certified copy of a filed motion to the superior court where the utility property is located to take jurisdiction of the matter. When presented the motion before, or at the time of, the hearing on the order to show cause, the commission shall dismiss the proceeding. The superior court shall then grant the motion to take jurisdiction of the matter. The political subdivision may then file, within 60 days of the court's granting the motion, an action in eminent domain pursuant to the Code of Civil Procedure and any further proceedings shall be conducted pursuant to those provisions.

(c) All proceedings held pursuant to either subdivision (b) or (d) shall be given priority over all civil cases in accordance with Section 1260.010 of the Code of Civil Procedure.

(d) In response to an order to show cause in response to a petition of the second class, as specified in Section 1403, and upon presentation of the motion specified in subdivision (b), the commission shall suspend the proceeding, but shall not dismiss the proceeding. The superior court shall then grant the motion to take limited jurisdiction of the matter solely for the purpose of determining the amount of just compensation. The political subdivision may then file, within 30 days, an action in the nature of eminent domain, solely for the purpose of determining, pursuant to the Evidence Code and the Code of Civil Procedure, the just compensation to be paid for the land, property, and rights. Upon a determination of just compensation, the court shall certify the finding to the commission. The finding shall not be appealable, and the court shall be acting as an agent of the commission in making the finding. The finding shall be binding on the commission as if it had been made by the commission itself pursuant to Section 1411. The commission shall then continue the matter pursuant to this chapter.

(e) If the respondent public utility, or the owners of more than one-half interest in the public utility, in the case of a petition of either the first or second class, files a motion to remove the matter from the commission to superior court pursuant to this section, the commission and the court shall not make an award of any litigation expenses incurred prior to the commission's dismissal or suspension of the matter.

(f) Notwithstanding any other provision of law, the date of

valuation for purposes of just compensation shall be fixed by the superior court as of the day on which the court grants the motion filed by the public utility pursuant to subdivision (b) or (d).

(g) A political subdivision is liable only as provided in Sections 1414 and 1415 for payment of the reasonable expenditures of the owner in any proceeding initiated pursuant to subdivision (d). For purposes of this subdivision, the proceeding before the commission, as used in Section 1415, includes any proceedings conducted pursuant to subdivision (d).

(h) The amendments made to this section by Assembly Bill 616 during the 1987 portion of the 1987–88 Regular Session of the Legislature shall not apply to or affect any petition filed pursuant to this section before January 1, 1988.

SEC. 133. Section 2117 of the Public Utilities Code, as added by Chapter 472 of the Statutes of 1988, is amended and renumbered to read:

2119. Every passenger stage corporation, highway common carrier, or cement carrier, and every officer, director, agent, or employee of a passenger stage corporation, highway common carrier, or cement carrier, who displays on any vehicle any identifying symbol other than one prescribed by the commission pursuant to Section 1038.5 or 1068, or who fails to remove an identifying symbol when required by the commission, is guilty of a misdemeanor and is punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in the county jail for not more than one year, or by both.

SEC. 134. Section 5371.5 is added to the Public Utilities Code, to read:

5371.5. The commission shall immediately investigate every business listed in every classified directory of telephone subscribers as furnishing limousine-for-hire or passenger charter transportation service for compensation in motor vehicles. Pursuant to this investigation, the commission shall do all of the following:

(a) Determine which businesses, if any, are required to have in effect a passenger charter-party carrier certificate or permit pursuant to Section 5371 but do not have the required certificate or permit.

(b) Inform any business not having a required certificate or permit that it is in violation of law.

(c) Within 60 days of informing the business pursuant to subdivision (b), institute civil or criminal proceedings, or both, pursuant to Article 6 (commencing with Section 5411) or any other applicable law.

SEC. 135. Section 5387 of the Public Utilities Code, as added by Chapter 324 of the Statutes of 1988, is amended and renumbered to read:

5388. The commission shall, on or before January 1, 1992, prepare and submit to the Legislature a report of its experiences with respect to issuing certificates and permits to charter-party carriers of

passengers valid for three years, including its recommendations as to returning to the former requirement for annual certificates and permits and as to issuing certificates and permits which are valid until revoked.

SEC. 136. Section 5387 of the Public Utilities Code, as added by Chapter 472 of the Statutes of 1988, is amended and renumbered to read:

5389. (a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, have access to the land, buildings, or equipment of a charter-party carrier of passengers used in connection with the operation of its business and may inspect the accounts, books, papers, and documents of the carrier. Any inspection by the commission may include photocopying or the electrostatic or photostatic reproduction of documents either at the premises of the carrier or the offices of the commission, at the option of the carrier. The commission shall reimburse the carrier for any copying or reproduction expenses incurred by it at the direction of the commission.

(b) Subdivision (a) also applies to access to property and inspections of the accounts, books, papers, and documents of any business which is a subsidiary or affiliate of, or a corporation which holds a controlling interest in, a charter-party carrier of passengers with respect to any transaction between the carrier and the subsidiary, affiliate, or holding corporation.

SEC. 137. Section 98147 of the Public Utilities Code is amended to read:

98147. The general manager shall provide for the custody of the funds of the district and the keeping of accounts of all receipts and disbursements. Payments shall be made only upon warrants duly and regularly signed by the chairperson or vice chairperson of the board, or other person authorized by the board to do so, and by the general manager or secretary. Alternatively, the board may request the Auditor of the County of Santa Cruz to audit, allow, and draw warrants on the district treasury for all legal claims presented to the county auditor and approved by a majority of the board. and the treasurer shall pay those warrants in the order in which they are presented.

SEC. 138. Section 4112 of the Revenue and Taxation Code is amended to read:

4112. (a) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the tax collector shall collect both of the following, in addition to the amount required to redeem:

(1) A fee of thirty-five dollars ($35) which shall be distributed to the county general fund to reimburse the county for its cost of obtaining the names and last known mailing addresses of, and for mailing notices required by Section 3701 to, parties of interest as defined by Section 4675.

(2) A fee in the amount required by Section 27361.3 of the

Government Code which shall be distributed to the county recorder for the cost of recordation of a rescission of the notice, as required by subdivision (c).

(b) Notwithstanding subdivision (a), if the tax-defaulted property is redeemed prior to the proposed sale, but after the county has incurred notice or publication costs pursuant to Section 3702 in connection with a notice of intended sale, a fee in an amount reasonably necessary to reimburse the tax collector for those costs may be collected.

(c) When tax-defaulted property subject to the notice recorded under Section 3691.4 is redeemed, the notice becomes null and void and the tax collector shall execute and record with the county recorder a rescission of the notice in the form prescribed by the Controller. The rescission shall be acknowledged by the county clerk, without charge, and after recordation shall be forwarded to the Controller.

(d) Any fee imposed under paragraph (1) of subdivision (a) or subdivision (b) shall be subject to the requirements of Section 54986 of the Government Code.

SEC. 139. Section 17043 of the Revenue and Taxation Code is amended to read:

17043. (a) In filing returns as provided in Article 1 (commencing with Section 18401) of Chapter 17, an individual is required to use the same filing status as that used on his or her federal income tax return for the same taxable year, except as provided in subdivisions (b), (c), and (d).

(b) In the case of a husband and wife who file a joint federal income tax return, if one spouse was a resident of this state for all of the taxable year and the other spouse was a nonresident for all or any portion of the taxable year, a joint nonresident income tax return is required to be filed.

(c) This section shall not apply to either of the following:

(1) A married couple, when either spouse was an active member of the armed forces or any auxiliary branch thereof during the taxable year.

(2) A married couple, when either spouse was a nonresident of this state for the entire taxable year and had no income from a California source during the taxable year.

(d) In the case of a married couple described in subdivision (c), that couple may either file separate returns or a single joint return on the forms and in the manner as the Franchise Tax Board may prescribe.

SEC. 140. Section 17156 of the Revenue and Taxation Code, as added by Chapter 555 of the Statutes of 1988, is repealed.

SEC. 141. Section 23455 of the Revenue and Taxation Code is amended to read:

23455. For purposes of this part, Section 55 of the Internal Revenue Code is modified as follows:

(a) Section 55(b)(1) of the Internal Revenue Code, relating to

tentative minimum tax, is modified by requiring the tentative minimum tax for the taxable year to be imposed as follows:

(1) With respect to corporations subject to tax under Chapter 2 (commencing with Section 23101), other than financial corporations, according to or measured by net income, for the privilege of doing business within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(2) With respect to corporations subject to tax under Chapter 3 (commencing with Section 23501), on net income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(3) With respect to corporations subject to tax under Article 2 of Chapter 4 (commencing with Section 23731), on the unrelated business income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative taxable income for the taxable year as exceeds the exemption amount.

(4) With respect to banks subject to tax under Section 23181, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount, and

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(5) With respect to financial corporations subject to tax under Section 23183, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount, and

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year. The offset prescribed by Section 23184 shall be applied to the tentative minimum tax in the same manner and to the same extent as that offset is applied to the tax imposed under Chapter 2 (commencing with Section 23101).

(b) Section 55(b)(2) of the Internal Revenue Code, relating to the definition of alternative taxable income, is modified as follows:

(1) For corporations whose net income is determined under Chapter 17 (commencing with Section 25101), alternative minimum taxable income shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax.

(2) With respect to taxpayers subject to Article 4 (commencing

with Section 23221) of Chapter 2, Articles 4 (commencing with Section 23221) to 9 (commencing with Section 23361), inclusive, shall apply to the tax imposed by this section except that Section 23221 shall not apply.

(3) For purposes of computing the alternative minimum tax for taxable years in which a taxpayer commenced doing business, dissolves, withdraws, or ceases doing business, Sections 23151, 23151.1, 23151.2, 23181, 23183, 23183.1, 23183.2, 23201 to 23204, inclusive, 23222 to 23224.5, inclusive, 23282, 23332.5, 23504, and 25401 shall be applied with due regard for the rate and alternative minimum taxable income prescribed by this chapter.

(c) Section 55(c) of the Internal Revenue Code, relating to the definition of regular tax, is modified to read:

(1) For purposes of this section, the term "regular tax" means the amount of tax imposed under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) or Article 2 (commencing with Section 23731) of Chapter 4.

(2) The tax specified in paragraph (1) shall be the amount determined prior to reduction by any credits against the tax.

SEC. 142. Section 23456 of the Revenue and Taxation Code is amended to read:

23456. For purposes of this part, Section 56 of the Internal Revenue Code is modified as follows

(a) (1) Section 56(a)(2) of the Internal Revenue Code, relating to mining exploration and development costs, shall apply only to expenses incurred during income years beginning on or after January 1, 1988.

(2) Section 56(a)(5) of the Internal Revenue Code, relating to pollution control facilities, shall apply only to amounts allowable as a deduction under Section 24372.3.

(b) Section 56(c)(2) of the Internal Revenue Code, relating to Merchant Marine Capital Construction Funds, shall not be applicable.

(c) (1) For purposes of applying Section 56(d) of the Internal Revenue Code, all references to "December 31, 1986," are modified to read "December 31, 1987," and all references to "January 1, 1987," are modified to read "January 1, 1988."

(2) (A) If there was a deferral of preference tax under former Section 23405 for any income year beginning before January 1, 1988, and the amount of the deferred tax has not been paid for any income year beginning before January 1, 1988, the amount of the net operating loss carryovers which may be carried to income years beginning after December 31, 1987, for purposes of this chapter, shall be reduced by the amount of the tax preferences attributable to the deferred tax which has not been paid.

(B) In the case of a net operating loss allowed to be carried forward under subdivision (e) of Section 24416, subparagraph (A) shall apply to the extent that such a loss would have resulted in a deferred tax under prior law.

(d) (1) Section 56(f)(2)(B) of the Internal Revenue Code, relating to adjustments for certain taxes, is modified to read: The amount determined under subparagraph (A) shall be appropriately adjusted to disregard any tax on or measured by income.

(2) The last sentence of Section 56(f)(2)(B) of the Internal Revenue Code, relating to taxes imposed by a foreign country or possession, shall not be applicable.

(3) Section 56(f)(2)(C)(i) of the Internal Revenue Code, relating to consolidated returns, is modified to substitute "combined report" for "consolidated return."

(4) Section 56(f)(2)(C)(ii) of the Internal Revenue Code, relating to treatment of dividends of related corporations, is modified to read: Adjusted net book income shall take into account only those dividends (or portions thereof) which have been included in net income for purposes of determining the regular tax.

(5) Section 56(f)(2)(F) of the Internal Revenue Code, relating to treatment of dividends from 936 corporations, shall not be applicable.

(6) Section 56(f)(2)(G) of the Internal Revenue Code, relating to rules for Alaska native corporations, shall not be applicable.

(7) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in book income shall not exceed the amount of interest income included for purposes of the regular tax.

(8) Appropriate adjustments shall be made to limit deductions from book income for interest expense in accordance with Sections 24344 and 24425.

(e) Section 56(g)(4)(A) of the Internal Revenue Code shall be modified to provide that in the case of any property placed in service on or after January 1, 1981, and prior to January 1, 1987, and not described in clause (i), (ii), or (iii) of Section 56(g)(4)(A) of the Internal Revenue Code, the amount allowable as depreciation or amortization with respect to that property shall be the same amount that would have been allowable for the income year had the taxpayer depreciated the property under the straight-line method for each income year of the useful life (determined without regard to Section 24354.2 or 24381) for which the taxpayer has held the property.

(f) (1) Section 56(g)(4)(C) of the Internal Revenue Code, relating to disallowance of items not deductible in computing earnings and profits, shall be modified as follows:

(A) A deduction shall be allowed for amounts allowable as a deduction for purposes of the regular tax under Sections 24402, 24410, 24411, and 25106.

(B) Section 56(g)(4)(C)(ii) of the Internal Revenue Code, relating to special rule for 100 percent dividends, shall not be applicable.

(C) Section 56(g)(4)(C)(iii) of the Internal Revenue Code, relating to special rule for dividends from Section 936 companies, shall not be applicable.

(2) With respect to corporations which are not subject to the tax imposed under Chapter 2 (commencing with Section 23101), the amount of interest income included in the adjusted current earnings shall not exceed the amount of interest income included for purposes of the regular tax.

(3) Appropriate adjustments shall be made to limit deductions from adjusted current earnings for interest expense in accordance with Sections 24344 and 24425.

SEC. 143. Section 23457 of the Revenue and Taxation Code is amended to read:

23457. For purposes of this part, Section 57 of the Internal Revenue Code is modified as follows:

(a) Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest, shall not be applicable.

(b) Section 57(a)(6)(A) of the Internal Revenue Code is modified to refer to amounts allowed as a deduction by Section 24357, rather than by Section 170 of the Internal Revenue Code.

(c) Section 57(a)(7) of the Internal Revenue Code, relating to accelerated depreciation or amortization on certain property placed in service before January 1, 1987, is modified to read: With respect to each property as described in Section 1250(c) of the Internal Revenue Code as that provision read on April 1, 1970, the amount by which the deduction allowable for the income year for exhaustion, wear, tear, obsolescence, or amortization exceeds the depreciation deduction which would have been allowable for the income year, had the taxpayer depreciated the property under the straight-line method for each income year of its useful life (determined without regard to Section 24354.2 or 24381) for which the taxpayer has held the property.

SEC. 144. Section 23701u of the Revenue and Taxation Code, as added by Chapter 1442 of the Statutes of 1987, is repealed.

SEC. 145. Section 23701u of the Revenue and Taxation Code, as added by Chapter 1139 of the Statutes of 1987, is amended and renumbered to read:

23701x. A corporation or trust described in Section 501(c)(25) of the Internal Revenue Code, relating to certain title-holding companies.

SEC. 146. Section 24343.2 of the Revenue and Taxation Code, as added by Chapter 1139 of the Statutes of 1987, is repealed.

SEC. 147. Section 25957.3 of the Revenue and Taxation Code, as added by Chapter 1139 of the Statutes of 1987, is amended and renumbered to read:

25957.4. A penalty shall be imposed for failing to meet the requirements of Section 24992 relating to original issue discount reporting requirements with respect to any person subject to tax under this part. The penalty shall be determined in accordance with Section 6706 of the Internal Revenue Code.

SEC. 148. Section 104.8 of the Streets and Highways Code, as amended by Chapter 770 of the Statutes of 1988, is amended and

renumbered to read:

104.17. (a) The department may provide information regarding, and may lease, airspace under the interchange of Route 4 and Route 5 in San Joaquin County and between 17th Street and the west side of Route 5 between the southbound on ramp and the off ramp near J Street in the City of San Diego and on the northeast corner of Route 101 and De La Vina Street in the County of Santa Barbara, to a city, county, or other political subdivision or another state agency for emergency shelter or feeding program purposes. Property may be leased pursuant to this section only if there is no buyer. The lease shall be for one dollar ($1) per month. The lease amount may be paid in advance of the term covered in order to reduce the administrative costs associated with the payment of the monthly rental fee.

Any lease executed pursuant to this section shall also provide for the cost of administering the lease.

The administrative fee shall not exceed five hundred dollars ($500) per year unless the department determines that a higher administrative fee is necessary.

(b) The Legislature finds and declares that the lease of real property pursuant to this section serves a public purpose.

(c) Any lease executed pursuant to subdivision (a) for airspace under the interchange of Route 4 and Route 5 in San Joaquin County shall provide for the rescission of existing leases of this airspace between the department and the City of Stockton and for the refunding of any rent paid pursuant to those leases for periods commencing on or after January 1, 1988.

SEC. 149. Section 188.4 of the Streets and Highways Code, as added by Chapter 1363 of the Statutes of 1988, is repealed.

SEC. 150. A heading is added immediately preceding Section 6780 as Chapter 3 (commencing with Section 6780) of Part 6 of Division 7 of the Streets and Highways Code, to read:

CHAPTER 3. REPAIRS AND IMPROVEMENTS TO STREET STANDARDS

SEC. 151. Section 1264 of the Unemployment Insurance Code is amended to read:

1264. (a) Unemployment compensation benefits, extended duration benefits, and federal-state extended benefits shall not be payable on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act.

(b) Any data or information required of individuals applying for

benefits specified by subdivision (a) to determine whether these benefits are not payable to them because of their alien status shall be uniformly required from all applicants for these benefits.

(c) In the case of an individual whose application for benefits specified by subdivision (a) would otherwise be approved, no determination by the department, an administrative law judge, or the appeals board that these benefits to the individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.

(d) If an alien presents evidence that the Immigration and Naturalization Service has granted the alien employment authorization as a result of the alien's application for temporary residence status under the federal Immigration Reform and Control Act of 1986 (Public Law 99-603), pending a final determination on this application the department shall not do either of the following:

(1) Commence or continue to pursue any administrative or judicial action to collect benefits where there has been a final determination that these benefits have been overpaid or chargeable to the alien, because of the alien's immigration status at the time he or she performed the services compensated by his or her base period wages.

(2) Determine that the alien was overpaid benefits in the current benefit year or in any prior benefit year, if the basis for the determination is the assumption that because the alien is an applicant for temporary resident status he or she was not, while performing the services compensated by base period wages, lawfully admitted for permanent residence, lawfully present for purposes of performing the services that were compensated by his or her base period wages, or permanently residing in the United States under color of law.

(e) If the Immigration and Naturalization Service grants the application and adjusts the alien's status to that of lawful temporary resident, the department shall not take any action described in paragraph (1) of subdivision (d) or make any determination described in paragraph (2) of subdivision (d). If an alien is not in the status of being lawfully admitted for permanent residence, lawfully present for the purpose of performing the services compensated by his or her base period wages, or permanently residing in the United States under color of law, at the time the alien's lawful temporary permanent status terminates, then compensation shall not be payable on the basis of services performed by the alien after the termination.

(f) Nothing in subdivision (d) shall be construed to require the department to do any of the following:

(1) Repay any amounts collected under any present or past action as described in paragraph (1) of subdivision (d).

(2) Redetermine the eligibility for unemployment compensation benefits of any alien who the department originally determined to be ineligible because of the alien's status at the time he or she

performed the services compensated by his or her base period wages and with respect to whom the determination has become final.

(3) Apply subdivision (d) or (e) retroactively.

(g) If the United States Secretary of Labor finds that subdivisions (d) and (e) are not in conformity with the federal Unemployment Tax Act, and effective as of the date that this finding becomes final, subdivisions (d), (e), and (f) shall be inoperative and of no legal force or effect.

(h) Unless subdivisions (d), (e), and (f) have earlier become inoperative and of no legal force or effect pursuant to a finding by the Secretary of Labor under subdivision (g), subdivisions (d), (e), (f), and (g) shall remain in effect only until September 30, 1989, and as of that date shall become inoperative, unless a later enacted statute which is chaptered before September 30, 1989, deletes or extends that date. Notwithstanding this subdivision, however, the department shall not take any action to collect benefits from an individual when the collection against that individual was suspended pursuant to subdivision (e) prior to September 30, 1989.

SEC. 152. The heading of Chapter 3.5 (commencing with former Section 5250) of Division 2 of the Unemployment Insurance Code, is repealed.

SEC. 153. Section 1807.5 of the Vehicle Code, as added by Chapter 724 of the Statutes of 1988, is repealed.

SEC. 154. Section 1807.5 of the Vehicle Code, as added by Chapter 1273 of the Statutes of 1988, is amended to read:

1807.5. (a) Notwithstanding Section 1808, any record of the department of a conviction of Section 23103 as specified in Section 23103.5, or of a conviction of Section 23152 or 23153 which occurred before January 1, 1987, is not a public record on and after a date which is five years after the date of conviction of that offense, and the department shall, thereafter, make any information relating to that conviction available only to persons authorized by law to receive the information.

(b) For the purposes of this section, "persons authorized by law to receive the information" means any of the following:

(1) The courts of the state.

(2) Peace officers, as defined in Section 830.1 of the Penal Code; subdivisions (a) and (b) of Section 830.2 of the Penal Code; subdivisions (a), (b), and (j) of Section 830 3 of the Penal Code; and subdivisions (a), (b), and (c) of Section 830.5 of the Penal Code.

(3) The Attorney General.

(4) District attorneys of any county within the state.

(5) Prosecuting city attorneys of any city within the state.

(6) Probation officers of any city or county of the state.

(7) Parole officers of any city or county of the state.

SEC. 155 Section 9271 of the Vehicle Code is amended to read:

9271. In addition to any other fees specified in this code, a fee sufficient to cover the department's costs for the inspections performed pursuant to Section 5505 shall be charged to register a

vehicle which has been declared a total loss salvage vehicle pursuant to Section 11515 or which has been reported to have been dismantled pursuant to Section 5500 or 11520.

SEC. 156. Section 9564 of the Vehicle Code, as added by Chapter 709 of the Statutes of 1987, is repealed.

SEC. 157. Section 17004.7 of the Vehicle Code, as added by Chapter 1201 of the Statutes of 1987, is repealed.

SEC. 158. Section 23113 of the Vehicle Code is amended to read:

23113. (a) Any person who drops, dumps, deposits, places, or throws, or causes or permits to be dropped, dumped, deposited, placed, or thrown, upon any highway or street any material described in Section 23112 or in subdivision (d) of Section 23114 shall immediately remove the material or cause the material to be removed.

(b) If the person fails to comply with subdivision (a), the governmental agency responsible for the maintenance of the street or highway on which the material has been deposited may remove the material and collect, by civil action, if necessary, the actual cost of the removal operation in addition to any other damages authorized by law from the person made responsible under subdivision (a).

(c) A member of the Department of the California Highway Patrol may direct a responsible party to remove the aggregate material described in subdivision (d) of Section 23114 from a highway when that material has escaped or been released from a vehicle.

SEC. 159. Section 23249.51 of the Vehicle Code is repealed. The repeal made by this section shall not affect the existence or validity of Section 23240.2 of the Vehicle Code, as added by Chapter 719 of the Statutes of 1987.

SEC. 160. The heading immediately preceding Section 27700 of the Vehicle Code is amended to read:

Article 6. Tow Trucks

SEC. 161. Section 13712 of the Water Code, as added by Chapter 1152 of the Statutes of 1986, is repealed.

SEC. 163. Section 6550 of the Welfare and Institutions Code is amended to read:

6550. If the juvenile court, after finding that the minor is a person described by Section 300, 601, or 602, is in doubt concerning the state of mental health or the mental condition of the person, the court may continue the hearing and proceed pursuant to this article.

SEC. 164. Section 11320 of the Welfare and Institutions Code is amended to read:

11320. (a) The Legislature finds and declares that this article is intended to be the employment and training program for the state and is intended to satisfy the registration requirement of Section 602(a) (19) (A) of Title 42 of the United States Code. The Legislature

further declares that this article shall be implemented even if the requirements of the federal Social Security Act are not met.

(b) The Legislature finds and declares that the state and counties recognize all of the following:

(1) Applicants for, and recipients of, aid under this chapter desire to work, and will do so if provided with the opportunity.

(2) The state and counties shall provide applicants for, and recipients of, aid under this chapter with the opportunity to obtain employment by offering a full range of employment training and supportive services, consistent with the needs of participants, that allow for informed choices in order to meet their employment goals.

(3) Able-bodied applicants for, and recipients of, aid under this chapter, are expected to work. The time frames for fulfilling this expectation shall be set forth in an explicit contract between an applicant or recipient and the county.

(4) Applicants for, and recipients of, aid under this chapter who are required to register for employment and training programs pursuant to Section 11310 are "individuals in special need" of training as described in Section 2 of the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), "individuals who require special assistance" provided in Section 123 of that act, and "most in need" of employment and training opportunities as described in Section 141 of that act. The Legislature finds and declares that these individuals are in the labor force actively seeking employment.

(5) Because success of any program will depend on the state, it must exercise leadership to engender enthusiasm among counties, county welfare department directors, and county welfare department line staff, who are the principal contacts for many recipients enrolled in the program.

(6) A successful program should also be based upon all the following principles:

(A) Recipients should be able to make choices and to live up to the responsibilities involved in those choices.

(B) Participants should have an early opportunity to obtain a job.

(C) Expenditures should be targeted where they can do the most good.

(D) The state and the counties have a responsibility to provide a sufficient level of services to meet the needs of participants, as well as to undertake sufficient public information efforts to make recipients, potential participants, employers, or other public or private entities aware of the components, opportunities, and benefits of this program.

(E) New programs should be good investments of public funds. Added costs to the system should be incurred only when they are likely to result in long-term personal and community payoff.

(7) Clients should not be placed in any unassigned pool while waiting for a scarce resource.

(8) Most types of employment and training program components

for applicants for, and recipients of, aid under this chapter have been successfully tried in this state.

(9) Aid under this chapter is available to persons who meet eligibility requirements. The program provided for in this article should not hamper continuation of this state's existing system of fraud detection, one of the most successful in the nation.

SEC. 165. Section 14006.1 of the Welfare and Institutions Code is amended to read:

14006.1. (a) The State Director of Health Services shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement subdivision (b) of Section 14006. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the Department of Health Services in order to implement subdivision (b) of Section 14006 shall not be subject to the review and approval of the Office of Administrative Law. These regulations shall become effective immediately upon filing with the Secretary of State.

(b) Any provision of Section 14006 that is in conflict with any federal statute or regulation shall be inapplicable to the extent of this conflict, but the provision and the remainder of the provisions shall be unaffected to the extent that no conflict exists.

SEC. 166. Section 16500.5 of the Welfare and Institutions Code is amended to read:

16500.5. (a) (1) The Legislature hereby finds and declares its intent to encourage the continuity of the family unit by:

(A) Providing services to avoid or limit out-of-home placement for children who are dependent children not taken from the physical custody of their parents and guardian pursuant to Section 364, or who are dependent children removed from physical custody of their parents or guardian pursuant to Section 361.

(B) Providing transitional supportive services for those children within the meaning of Sections 361 and 364 when they are returned to the family unit.

(C) Providing counseling and support designed to eradicate the situation that necessitated intervention.

(2) The Legislature finds that maintaining abused and neglected children in foster care grows increasingly costly each year, and that adequate funding for family services which might enable these children to remain in their homes is not as readily available as funding for foster care placement.

(3) The Legislature further finds that other state bodies have addressed this problem through various systems of flexible reimbursement in child welfare programs that provide for more intensive and appropriate services to prevent foster care placement or significantly reduce the length of stay in foster care.

(4) Accordingly, it is the intent of the Legislature in enacting this section to test a system of flexible reimbursement in order to evaluate its potential as an efficient, economical, and effective alternative to out-of-home placement of children.

(b) (1) (A) No more than three participating counties selected by the department, one of which shall be Solano County, on a two-year pilot program basis, may claim, on an annual basis, a portion of the state's share of that county's AFDC-FC expenditures pursuant to subdivision (d) of Section 11450 in advance, provided the county shows that it will conduct a program of family reunification and family maintenance services for families receiving these services pursuant to Sections 300, 361, and 364. For each fiscal year of the two-year pilot program, a participating county may claim in advance an amount equal to 10 percent of the projected state's share of AFDC-FC funds to be expended by that county pursuant to subdivision (d) of Section 11450. The specific amount of funds to be advanced each year shall be determined by projecting the state share of AFDC-FC General Fund expenditures for abused or neglected children supervised and placed by the county welfare department for each of the pilot program years based upon state expenditures for AFDC-FC for the previous five years.

(B) Except as provided in paragraph (2), in the event that in any pilot program year the sum of a participating county's total AFDC-FC General Fund expenditures for their children, added to the amount advanced to the county, exceeds its total projected AFDC-FC General Fund expenditures for their children for that fiscal year, by 5 percent or less, the county shall share in the funding of that overage on a 25 percent county, 75 percent state/federal cost ratio basis. If the county's total AFDC-FC General Fund expenditures, added to the amount advanced to the county exceeds, by more than 5 percent, the total projected AFDC-FC General Fund expenditures for that fiscal year, the county shall fund that portion of the overage in excess of 5 percent on a 100 percent basis. If the sum of a participating county's total AFDC-FC General Fund expenditures for their children, added to the amount advanced to the county, is less than the total projected AFDC-FC General Fund expenditures for their children for that fiscal year, the county shall receive 25 percent of the amount of the savings.

(2) A participating county's share of expenditures in excess of the projected total may be reduced upon approval of the department and the Department of Finance based on consideration of any unanticipated factors which result in higher than projected AFDC-FC expenditures.

(3) The department shall select no more than three representative counties, one of which shall be Solano County, to participate in the pilot program.

(4) Services which may be provided under this program may include counseling, parenting, respite, and homemaking. Additional services may include those enumerated in Sections 16506.1 and

16507.1. The services to be provided pursuant to this section may be determined by each participating county.

(c) (1) These pilot projects shall provide specific programs of direct services based on individual family needs as reflected in the service plans to families of children who are dependent children not taken from physical custody of their parents or guardians pursuant to Section 364, or who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 361. The county welfare department social worker may return a dependent minor removed from the home pursuant to Section 361, with appropriate pilot project services, pursuant to an appropriate court order.

(2) The services shall only be provided to families whose children are certified by a juvenile court judge to be children who will be placed in out-of-home care without the provision of project services or to be children who can be returned to their families with the provision of project services. Each county shall be permitted to contract with individuals and organizations to provide services pursuant to this section.

(d) The services selected by any participating county shall be reasonable and meritorious and shall demonstrate cost effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement. A county shall not expend more funds for supportive services under this section than that amount which would be expended for placement in out-of-home care.

(e) The pilot program in each demonstration county shall be deemed successful if at least 75 percent of the children receiving demonstration project services remain in their own home for six months after termination of project services, and if 60 percent remain at home one year after project services are terminated. With respect to children selected to receive project services who have already been removed from their home and placed in out-of-home care, the project shall be deemed successful if the average length of stay in out-of-home care is 50 percent less than the average length of stay in out-of-home care for families who do not receive demonstration project services.

(f) Funds used for project services shall supplement, not supplant, child welfare services funds available for services pursuant to Sections 16506.1 and 16507.1.

(g) The department shall submit a report to the Legislature that includes data from each participating pilot county demonstrating to what extent each has met the criteria specified in this section. An interim report shall be submitted by the department no later than six months after the conclusion of the pilot projects with a final report to be submitted after project completion.

SEC. 167. Section 13 of Chapter 916 of the Statutes of 1988 is repealed.

SEC. 168. Any section of any act enacted by the Legislature

during the 1989 calendar year, which takes effect on or before January 1, 1990, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 1361

An act to amend Section 35555 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 35555 of the Vehicle Code is amended to read:

35555. During the period commencing September 15 of each year and ending March 15 of the following year, the weight limitations of Section 35551 do not apply to any cotton module mover or any truck tractor pulling a semitrailer that is a cotton module mover, when operated as follows:

(a) Laterally across a state highway at grade of the state highway.

(b) Upon any county highway within the Counties of Fresno, Imperial, Kern, Kings, Madera, Merced, Riverside, San Benito, San Bernardino, and Tulare, except as prohibited or limited on county highways or portions thereof by resolution of the county board of supervisors having jurisdiction.

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 complete the harvest and transport this season's cotton crop to prevent great economic losses due to cotton being left in the fields to deteriorate, it is necessary that this act take effect immediately.

CHAPTER 1362

An act to amend Sections 1797.3, 1797.7, 1797.172, 1797.175, 1797.185, 1797.202, 1797.210, and 1797.214 of, and to add Sections 1797.63, 1797.112, and 1797.192 to, the Health and Safety Code, relating to emergency services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1797.3 of the Health and Safety Code is amended to read:

1797.3. The provisions of this division do not preclude the adoption of additional training standards for EMT-II and EMT-P personnel by local EMS agencies, consistent with standards adopted pursuant to Sections 1797.171, 1797.172, and 1797.214.

SEC. 2. Section 1797.7 of the Health and Safety Code is amended to read:

1797.7. (a) The Legislature finds and declares that the ability of some prehospital emergency medical care personnel to move from the jurisdiction of one local EMS agency which issued certification and authorization to the jurisdiction of another local EMS agency which utilizes the same level of emergency medical care personnel will be unreasonably hindered if those personnel are required to be retested and recertified by each local EMS agency.

(b) It is the intent of the Legislature in enacting this section and Section 1797.185 to ensure that EMT-P personnel who have met state competency standards for their basic scope of practice, as defined in Chapter 4 (commencing with Section 100135) of Division 9 of Title 22 of the California Code of Regulations, and are currently certified are recognized statewide without having to repeat testing or certification for that same basic scope of practice.

(c) It is the intent of the Legislature that local EMS agencies may require prehospital emergency medical care personnel who were certified in another jurisdiction to be oriented to the local EMS system and receive training and demonstrate competency in any optional skills for which they have not received accreditation. It is also the intent of the Legislature that no individual who possesses a valid California EMT-P certificate shall be prevented from beginning working within the standard statewide scope of practice of an EMT-P if he or she is accompanied by a EMT-P who is currently certified in California and is accredited by the local EMS agency. It is further the intent of the Legislature that the local EMS agency provide, or arrange for the provision of, training and accreditation testing in local EMS operational policies and procedures and any optional skills utilized in the local EMS system within 30 days of

application for accreditation as an EMT-P by the local EMS agency.

(d) It is the intent of the Legislature that subdivisions (a), (b), and (c) not be construed to hinder the ability of local EMS agencies to maintain medical control within their EMS system in accordance with the requirements of this division.

SEC. 3. Section 1797.63 is added to the Health and Safety Code, to read:

1797.63. "Certifying examination" or "examination for certification" means an examination designated by the authority for a specific level of prehospital emergency medical care personnel that must be satisfactorily passed prior to certification or recertification at the specific level and may include any examination or examinations designated by the authority, including, but not limited to, any of the following options determined appropriate by the authority:

(a) An examination developed either by the authority or under the auspices of the authority or approved by the authority and administered by the authority or any entity designated by the authority to administer the examination.

(b) An examination developed and administered by the National Registry of Emergency Medical Technicians.

(c) An examination developed administered, or approved by a certifying agency pursuant to standards adopted by the authority for the certification examination.

SEC. 4. Section 1797.112 is added to the Health and Safety Code, to read:

1797 112. The Emergency Medical Services Personnel Fund is hereby created in the State Treasury and is continuously appropriated to the authority to maintain the authority's testing and personnel registry program and to make reimbursements to entities for the performance of functions for which fees are collected pursuant to subdivision (a) of Section 1797.185. The authority may transfer unused portions of the Emergency Medical Services Personnel Fund to the Surplus Money Investment Fund.

SEC. 5. Section 1797.172 of the Health and Safety Code is amended to read:

1797.172. (a) 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.

(b) The director shall, in consultation with a committee of local EMS medical directors named by the Emergency Medical Directors Association of California, approve any addition to a local optional scope of practice for EMT-P's proposed by the medical director of a local EMS agency prior to implementation of the addition in the local system.

SEC. 6. Section 1797.175 of the Health and Safety Code is amended to read:

1797.175. The authority shall establish the standards for continuing education and shall designate the examinations for

certification and recertification of all prehospital personnel.

The authority shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

SEC. 7. Section 1797.185 of the Health and Safety Code is amended to read:

1797.185. (a) The authority shall establish criteria for the statewide recognition of the certification of EMT-P personnel in the basic scope of practice of those personnel. The criteria shall include, but need not be limited to, the following:

(1) Standards for training, testing, certification, and revocation of certification, as required for statewide recognition of certification. The standards may include designation by the authority of the specific examinations required for certification, including, at the option of the authority, an examination provided by the authority. At the option of the authority, the standards may include a requirement for registration of prehospital emergency care personnel with the authority or other entity designated by the authority.

(2) Conditions for local accreditation of certified EMT-P personnel which are reasonable in order to maintain medical control and the integrity of the local EMS system, as determined by the authority and approved by the commission.

(3) Provisions for local accreditation in approved optional scope of practice, if any, as allowed by applicable state regulations and statutes.

(4) Provisions for the establishment and collection of fees by the appropriate agency, which may be the authority or an entity designated by the authority to collect fees for the authority, for testing, certification, accreditation, and registration with the appropriate state or local agency in the appropriate scope of practice. All fees collected for the authority in a calendar month by any entity designated by the authority pursuant to this section to collect fees for the authority shall be transmitted to the authority for deposit into the Emergency Medical Services Personnel Fund within 30 calendar days following the last day of the calendar month in which the fees were received by the designated entity.

(b) After January 1, 1991, all regulations for EMT-P personnel adopted by the authority shall, where relevant, include provisions for statewide recognition of certification or authorization for the scope of practice of those personnel.

(c) On or before July 1, 1991, the authority shall amend all relevant regulations for EMT-P personnel to include criteria developed pursuant to subdivision (c) of Section 1797.7 and subdivision (b) of Section 1797.172 to insure statewide recognition of certification for the scope of practice of those personnel.

(d) All future regulations for EMT-P personnel adopted by the authority shall, where relevant, include provisions for statewide recognition of certification or authorization for the scope of practice of those personnel.

SEC. 8. Section 1797.192 is added to the Health and Safety Code, to read:

1797.192. On or before July 1, 1991, the authority shall adopt standards for a standard statewide scope of practice which shall be utilized for the training and certification testing of EMT-P personnel for certification as EMT-P's. Local EMS systems shall not be required to utilize the entire standard scope of practice. Testing of EMT-P personnel for local accreditation to practice shall only include local operational policies and procedures, and drug, device, or treatment procedures being utilized within that local EMS system pursuant to Sections 1797.172 and 1797.221.

SEC. 9. 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, who has substantial experience in the practice of emergency medicine, 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. The authority director may waive the requirement that the medical director have substantial experience in the practice of emergency medicine if the requirement places an undue hardship on the county or counties.

(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.

SEC. 10. Section 1797.210 of the Health and Safety Code is amended to read:

1797.210. (a) The medical director of the local EMS agency shall issue a certificate to an individual upon proof of satisfactory completion of an approved training program, passage of the certifying examination designated by the authority, completion of any other requirements for certification established by the authority, and a determination that the individual is not precluded from certification for any of the reasons listed in Section 1798.200. The certificate shall be proof of the individual's initial competence to perform at the designated level.

(b) The medical director of the local EMS agency shall, at the interval specified by the authority, recertify an EMT-I, EMT-II, or EMT-P upon proof of the individual's satisfactory passage of the examination for recertification designated by the authority,

completion of any continuing education or other requirements for recertification established by the authority, and a determination that the individual is not precluded from recertification because of any of the reasons listed in Section 1798.200.

SEC. 11. Section 1797.214 of the Health and Safety Code is amended to read:

1797.214. A local EMS agency may require additional training or qualifications for the use of drugs, devices, or skills in either the standard scope of practice or a local EMS agency optional scope of practice, which are greater than those provided in this chapter as a condition precedent for practice within such EMS area in an advanced life support or limited advanced life support prehospital care system consistent with standards adopted pursuant to this division.

SEC. 12. 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 pernalty for a crime or infraction, or eliminates a crime or infraction.

Furthermore, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by this act, because the local agency has the authority to levy service charges, fees, or assessments to pay for the program or level of service mandated by this act.

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

SEC. 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 permit the Emergency Medical Services Authority to implement needed changes regarding emergency medical services, it is necessary that this act go into immediate effect.

CHAPTER 1363

An act to add Section 7011.4 to the Business and Professions Code, relating to contractors.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 7011.4 is added to the Business and Professions Code, to read:

7011.4. (a) Notwithstanding Section 7011, there is in the Contractors' State License Board, a separate enforcement unit which shall rigorously enforce this chapter prohibiting all forms of unlicensed activity. This unit shall operate as a demonstration project only in southern California.

(b) Persons employed as deputy registrars in this unit and designated by the Director of Consumer Affairs are not peace officers and are not entitled to safety member retirement benefits. They do not have the power of arrest. However, they may issue a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

SEC. 2. It is the intent of the Legislature that the enforcement unit created by this act function as a demonstration project in southern California only and that it be limited to the personnel and money authorized in the Budget Act of 1989.

CHAPTER 1364

An act to add Chapter 3 (commencing with Section 13070) to Part 1 of Division 12 of the Health and Safety Code, relating to fire protection.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Chapter 3 (commencing with Section 13070) is added to Part 1 of Division 12 of the Health and Safety Code, to read:

CHAPTER 3. FIRESCOPE PROGRAM

13070. This chapter shall be known and may be cited as the FIRESCOPE Act of 1989.

13071. The Office of Emergency Services shall establish and

administer a program, which shall be denominated the FIRESCOPE Program (FIrefighting RESources of California Organized for Potential Emergencies), to maintain and enhance the efficiency and effectiveness of managing multiagency firefighting resources in responding to an incident. The program shall be based on the concepts and components developed or under development by the Firescope project chartered by the United States Congress in 1972. The program shall provide for the research, development, and implementation of technologies, facilities, and procedures to assist state and local fire agencies in the better utilization and coordination of firefighting resources in responding to incidents.

13072. The goal of the FIRESCOPE Program is the improvement of fire incident management and the coordination of multiagency firefighting resources on major or multiple incidents. The program shall include, but is not limited to, the following areas as part of its research, development, and implementation objectives:

(a) Improved methods to coordinate multiagency firefighting resources during major incidents.

(b) Improved methods for forecasting fire behavior.

(c) The capability to assess fire, weather, and terrain conditions at the scene of an incident.

(d) Standard fire terminology for improving incident management.

(e) Improved multiagency fire communications.

(f) Multiagency training on FIRESCOPE components and products.

(g) A common mapping system, including orthophoto maps.

(h) Improved fire information management systems.

(i) Regional operational coordination centers for regional multiagency coordination of firefighting resources.

13073. The Office of Emergency Services shall carry out this chapter in cooperation with the Department of Forestry and Fire Protection and the State Fire Marshal and with the advice of the Fire and Rescue Service Advisory Committee/FIRESCOPE Board of Directors within the Office of Emergency Services. The Fire and Rescue Service Advisory Committee/FIRESCOPE Board of Directors shall submit periodic reports to the Joint Committee on Fire, Police, Emergency and Disaster Services of the Legislature on the status of the FIRESCOPE Program.

CHAPTER 1365

An act to amend Section 1626 of, and to add Chapter 4.5 (commencing with Section 1645) to Division 2 of, the Health and Safety Code, relating to blood.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1626 of the Health and Safety Code is amended to read:

1626. (a) Except as provided in subdivisions (b) and (c), on or after January 1, 1987, it shall be unlawful, in any transfusion of blood, to use any blood which was obtained from a paid donor.

(b) Subdivision (a) shall not be applicable to any transfusion of blood which was obtained from a paid donor if the physician and surgeon performing the transfusion has determined, taking into consideration the condition of the patient who is the recipient of the transfusion, that other blood of a type compatible with the blood type of the patient cannot reasonably be obtained for the transfusion.

(c) After March 15, 1987, and on or before December 31, 1992, subdivision (a) shall not apply to blood platelets secured from donors through the hemapheresis process if all of the following requirements are satisfied:

(1) The blood platelets are ordered by a doctor holding a valid California physician's and surgeon's certificate.

(2) The blood platelets are secured from a single donor and are sufficient to constitute a complete platelet transfusion.

(3) The donor's identification number is recorded on the label provided for in Section 1627 and is kept in the records of the entity providing the blood platelets for a minimum of five years.

(4) The donor has been examined by a doctor holding a valid California physician's and surgeon's certificate, and a repeat donor is reexamined at least annually.

(5) The transfusion is performed in a general acute care hospital.

(6) The blood platelets are processed according to standards issued by the American Association of Blood Banks, pursuant to Section 1602.1.

(7) The donor and blood are tested in accordance with regulations issued by the State Department of Health Services.

(8) The entity providing the blood platelets is licensed by the State Department of Health Services.

(9) The information that the donor of the blood platelets was compensated is printed on the label in accordance with Sections 1603.5 and 1627.

SEC. 2. Chapter 4.5 (commencing with Section 1645) is added to Division 2 of the Health and Safety Code, to read:

CHAPTER 4.5. THE PAUL GANN BLOOD SAFETY ACT

1645. (a) Whenever there is a possibility that a blood transfusion may be necessary as a result of a surgical procedure, a physician and surgeon, by means of a standardized written summary as most recently developed or revised by the State Department of Health Services pursuant to subdivision (e), shall inform the surgery patient of the positive and negative aspects of receiving autologous blood and directed and nondirected homologous blood from volunteers. For purposes of this section, the term "autologous blood" includes, but is not limited to, predonation, intraoperative autologous transfusion, plasmapheresis, and hemodilution.

(b) The physician and surgeon shall note on the patient's medical record that the standardized written summary described in subdivision (e) was given to the patient.

(c) Subdivisions (a) and (b) shall not apply when medical contraindications or a life-threatening emergency exists.

(d) When there is no life-threatening emergency and there are no medical contraindications, the physician and surgeon shall allow adequate time prior to surgery for predonation to occur. Notwithstanding this chapter, if a patient waives allowing adequate time prior to surgery for predonation to occur, a physician and surgeon shall not incur any liability for his or her failure to allow adequate time prior to surgery for predonation to occur.

(e) The State Department of Health Services shall develop and annually review, and if necessary revise, a standardized written summary which explains the advantages, disadvantages, risks, and descriptions of autologous blood, and directed and nondirected homologous blood from volunteer donors. These blood options shall include, but not be limited to, the blood options described in subdivision (a). The summary shall be written so as to be easily understood by a layperson.

(f) The Board of Medical Quality Assurance shall publish the standardized written summary prepared pursuant to subdivision (e) by the State Department of Health Services and shall distribute copies thereof, upon request, to physicians and surgeons. The Board of Medical Quality Assurance shall make the summary available for a fee not exceeding in the aggregate the actual costs to the State Department of Health Services and the Board of Medical Quality Assurance for developing, updating, publishing and distributing the summary. Physicians and surgeons shall purchase the summary from the Board of Medical Quality Assurance for distribution to their patients as specified in subdivision (a), and clinics, health facilities and blood collection centers may purchase the summary if they desire.

CHAPTER 1366

An act to add Sections 12333 and 15323.5 to, and to repeal and add Article 5.5 (commencing with Section 9115) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of, the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Article 5.5 (commencing with Section 9115) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code is repealed.

SEC. 2. Article 5.5 (commencing with Section 9115) is added to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, to read:

Article 5.5. Legislative Office Facilities

9115. (a) In order to adequately provide for the proper housing and administrative requirements of the Legislature, it is necessary for the Legislature to acquire and finance additional legislative office facilities in a location adjacent to the State Capitol Building so as to provide for the efficient and effective operations of state government.

(b) The Legislature desires to provide a procedure for acquiring, and to authorize the financing of, these legislative office facilities by the enactment of this article.

(c) It is the intent of the Legislature to conduct a thorough review of the current and long-term requirements of the Legislature for office facilities and to conduct a study to determine the most economical and cost-effective method of funding the acquisition of those office facilities.

(d) It is also the intent of the Legislature to minimize delays, and thereby reduce costs, in the acquisition of adequate office facilities, and to that end it is the intent of the Legislature that the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code be completed in an expeditious manner without undue delays.

9116. (a) The Legislature shall conduct a project feasibility study which includes a thorough review of the current and long-term requirements of the Legislature for office facilities and a determination of the most economical and cost-effective method of funding the acquisition of those office facilities. The Legislature may contract with the Department of General Services for the purpose of the feasibility study.

(b) The project feasibility study required by subdivision (a) shall include an analysis of alternative financing mechanisms, including, but not limited to, various types of bond financing, lease purchase financing, pay-as-you-go financing using various funds such as the General Fund or the Special Account for Capital Outlay, and the involvement of private sector finance mechanisms. A recommendation shall be made regarding the potential options and the respective costs. The project feasibility study shall be completed no later than January 1, 1990.

9117. As used in this article, the following terms have the following meanings:

(a) "Bonds' means bonds, notes, bond anticipation notes, and any other evidence of indebtedness, and also includes certificates of participation or lease-purchase agreements.

(b) "Lease financing" means the financial undertaking authorized by this article under which the lessee shall lease the project from the lessor and the rental payments to be paid by the lessee, and any other authorized or appropriated funds, shall be used to secure the repayment of the bonds and the proceeds of the bonds shall be applied to pay the costs of the project and related costs as authorized by this article.

(c) "Lessee" means the Legislature, acting through its authorized representative as provided for in this article.

(d) "Lessor" means the State Public Works Board acting pursuant to the State Building Construction Act of 1955, Part 10b (commencing with Section 15800) of Division 3 of Title 2, a joint exercise of powers agency established between the lessee and any qualifying entity of government and acting pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or any other person, corporation, partnership, or other entity serving as the lessor under the lease financing.

(e) "Project" means the property and the buildings on the property bounded by 10th, 11th, N, and O Streets in the City of Sacramento, consisting of two connecting buildings located at 1020 N Street and 1021 O Street in the City of Sacramento, and the remodeling and rehabilitation of these buildings or destruction and removal of these buildings and the construction of new buildings on this property for use as legislative office facilities, and includes all aspects of the project from initial planning to completion and occupancy by the Legislature.

(f) "Treasurer" means the Treasurer of the State of California.

9118. (a) The lessee may lease the project from the lessor, and the lessor may lease the project to the lessee. The lessor may acquire all real property for the project with the proceeds of the bonds.

(b) The lessee shall take all actions required under this article by and through any person designated by a resolution adopted by the Senate Committee on Rules and the Assembly Committee on Rules. The designated person may contract for, and on behalf of, the Legislature, as lessee, and the Legislature shall be bound by the

contracts and actions of the designated person.

(c) In connection with the financing authorized by this article, the lessor and the lessee may seek and obtain interim financing from the Pooled Money Investment Account pursuant to Section 16312.

9119. (a) The State Public Works Board may issue bonds pursuant to Chapter 5 (commencing with Section 15830) of Part 10b of Division 3 of Title 2 to finance the project authorized by this article.

(b) The Treasurer may, in his or her discretion, serve as trustee for the bonds. The Treasurer shall sell the bonds in accordance with Section 5702.

9120. The terms of the lease financing are those specified in the lease, trust agreement, indenture, and any related documents executed and delivered between the lessor, the lessee, and the Treasurer. The total amount of lease financing under this article shall not exceed the sum of the cost of the project, including all sums necessary to pay the costs of coordination, direction, and supervision of development and design, financing costs, interest during construction, a reasonably required reserve fund, interest on interim financing, administrative expenses of the lessor, the lessee, the Treasurer, and their agents and consultants, and the transfer and relocation of the present occupants of the buildings to new facilities.

9121. (a) This article shall be deemed and construed to be separate and complete authority for all of the actions authorized by this article, including, but not limited to, the development, design, construction, operation, maintenance, and financing of the project, and all acts related thereto, and the transfer and relocation of the present occupants of the buildings to new facilities. To the extent that this article is inconsistent with any other general statute or special act or parts thereof, or any local government laws, rules, and regulations, now or hereafter enacted, this article is controlling.

(b) Notwithstanding any other provision of law, the project authorized by this article shall be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) The project authorized by this article shall not be subject to any other state or local government requirement, limitation, or control, including, but not limited to, zoning and building permits.

(d) This article shall be liberally construed to effect its purpose and in a manner that will promote the acquisition, construction, renovation, improvement, and financing of the project.

(e) Notwithstanding any other provision of this article, no funds shall be expended for the destruction, removal, remodeling, or rehabilitation of the existing buildings on the project property prior to the completion of the feasibility study required pursuant to Section 9116, and the approval of the funding source and the project scope and cost by a subsequently enacted resolution of both houses of the Legislature.

9122. The State of California does pledge to, and agree with, the holders of any bonds issued under this article, and with those parties who may enter into contracts with the lessor, the lessee, and the Treasurer pursuant to this article, that the state will not limit or alter the rights vested in the lessor, the lessee, or the Treasurer to finance the project or to fulfill the terms of any lease, trust agreement, indenture, or other contract or instrument by, between, or among the lessor, the lessee, or the Treasurer pursuant to this article, or in any way impair the rights or remedies of the bonds or of the parties until those bonds, together with interest thereon, are fully paid and discharged in accordance with their terms, and all the contracts and instruments are fully performed in accordance with their terms.

9123. (a) Title to the buildings and property bounded by 10th, 11th, N, and O Streets in the City of Sacramento shall vest in the Legislature on the effective date of this act. The Legislature may transfer title for the purposes of any financing of the project, however, at the conclusion of any financing, title shall revest in the Legislature.

(b) The Legislature shall have jurisdiction over the project.

(c) All space in the legislative office facilities and all annexes and additions thereto shall be allocated from time to time by the Senate Committee on Rules and the Assembly Committee on Rules in accordance with their determination of the needs of the Legislature and the two houses thereof. The committees shall allocate the space as they determine to be necessary for facilities and agencies in dealing with the Legislature as a whole, including, but not limited to, press quarters, billrooms, telephone rooms, and offices for the Legislative Counsel, Legislative Analyst, Auditor General, and for committees created by the two houses jointly. The committees shall allocate to the Senate and the Assembly, respectively, the space they determine to be needed by the houses and their committees and the members, their officers, employees, and attaches thereof. The space for members thus allocated to the Senate and to the Assembly shall be allotted from time to time proportionately, according to party affiliation, by the Senate Committee on Rules and the Assembly Committee on Rules, respectively.

9124. (a) The determination of the Senate Committee on Rules and the Assembly Committee on Rules as to the needs of the Legislature shall be subject to change only by action of those committees or by concurrent resolution.

(b) The Department of General Services shall provide maintenance and operation services in connection with the legislative office facilities as requested by the Legislature.

SEC. 3. Section 12333 is added to the Government Code, to read:

12333. (a) The Treasurer may act as trustee, registrar, paying agent, tender agent, custodian, depository, transfer agent, fiscal agent, or in any other fiduciary or representative capacity for any purpose permitted by law, and may accept and execute any trust business permitted by any law of this state or of the United States in

connection with the authorization, issuance, sale, and delivery of any and all manner of lease, installment sale or purchase agreement, bond, note, bond anticipation note, certificate of participation, or other obligation or certificate evidencing an obligation of the state or any department, agency, board, commission, authority, or other entity of the state or of which the state is a member.

(b) When acting in any capacity authorized by subdivision (a), the Treasurer may exercise all powers that may be exercised by any private person, corporation, bank, trust company, or legal entity in this state.

(c) This section constitutes separate and complete authority for the Treasurer to act in accordance with the terms hereof, and is also additional and supplemental to any other law concerning the powers of the Treasurer.

SEC. 4. Section 15323.5 is added to the Government Code, to read:

15323.5. The department shall maintain regional offices in the San Francisco Bay area, Los Angeles County, and the greater San Diego area in order to carry out its functions and duties. The San Diego regional office shall pay particular attention to economic development issues involving the border, including maquiladoras, labor, tourism, and other factors, and shall make recommendations at least annually to the Governor and the Legislature on methods, programs, and policies to improve the growth of jobs, income, and standards of living along the border.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide urgently needed office space for legislative staff and committees in a location convenient to the State Capitol Building as soon as possible in a manner that is cost-effective, and to insure that the Department of Commerce maintains appropriate regional offices within this state, it is necessary for this act to take effect immediately.

CHAPTER 1367

An act to amend Section 3502 of the Penal Code, and to add and repeal Section 1706 of the Welfare and Institutions Code, relating to youth, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 3502 of the Penal Code is amended to read:

3502. Except as provided in Section 1706 of the Welfare and Institutions Code, no biomedical research shall be conducted on any prisoner in this state.

SEC. 2. Section 1706 is added to the Welfare and Institutions Code, to read:

1706. (a) Notwithstanding Section 3502 of the Penal Code, research involving the administration of vitamins, minerals, and amino acids to wards and involving analysis of the subjects' hair and blood may be conducted provided that the following conditions exist:

(1) The Department of the Youth Authority approves the research after making a determination pursuant to Section 3515 of the Penal Code.

(2) The research subjects have given informed consent under Section 3521 of the Penal Code.

(3) The substances administered in the research are limited to those which are approved by the federal Food and Drug Administration and which do not require a physician's prescription.

(4) The substances are administered only within three times the Recommended Dietary Allowance established by the National Research Council in effect on the effective date of this act under the supervision of a physician.

(5) The withdrawal of blood shall be performed only before commencement and following the conclusion of the research and shall be withdrawn in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens for the purposes of this section.

(b) Protocols for the research conducted under this section, and its implementation, shall be subject to review and approval by a research oversight committee. Membership of the committee shall include at least two physicians not employed or on contract to the Department of the Youth Authority or the Department of Corrections, the Chief of Medical Services of the Department of the Youth Authority, a representative from the State Department of Health Services, at least two persons with extensive background in research competent to critique the proposal outlined in this section and assist in its implementation, and a person representing the wards to be selected by the State Public Defender's Office.

(c) As used in this section, "ward" means persons who are committed to the Department of the Youth Authority who are 18 years of age or older.

(d) The Department of the Youth Authority shall not conduct any investigation under this section of a new drug, as defined in Section 201 of the federal Food, Drug and Cosmetic Act (21 U.S.C. Sec. 321) without approval from the federal Food and Drug Administration.

(e) This section shall remain in effect only until January 1, 1995,

and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1995, deletes or extends that date.

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:

Current law needs to be changed in order to permit a planned research program, authorized by this act, to be implemented at the earliest possible date so that the program may lead to the reduction of violence among incarcerated persons.

CHAPTER 1368

An act to add Section 11320.57 to the Welfare and Institutions Code, relating to employment.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 11320.57 is added to the Welfare and Institutions Code, to read:

11320.57. (a) (1) A county welfare department may, as part of the county Greater Avenues for Independence program plan required pursuant to Sections 11320.2 and 11320.3, include a training component in which persons participating under this article receive training in business development and self-employment as an option under Sections 11320.3 and 11320.5. As part of the county plan, the county shall provide a statement of need for such a training component in that county.

(2) (A) Where appropriate, the county welfare department shall refer the participants to a training agency based on the assessment required by subdivision (c) of Section 11320.5.

(B) The county welfare department shall approve and monitor the training program.

(b) (1) Persons participating pursuant to this article who indicate a desire to participate in a training component provided for pursuant to subdivision (a) shall be carefully assessed for self-employment skills or other relevant skills and aptitude by the training agency, and a determination shall be made as to whether the individual has the potential to become successfully self-employed or obtain employment in the child care field.

(2) The assessment made pursuant to paragraph (1) shall include an evaluation of the viability and likelihood of success of the individual's business idea or plan.

(3) An assessment made pursuant to paragraph (1) shall not

discriminate against individuals on the basis of age, gender, or ethnic origin.

(4) If the training agency determines that the program is not suitable for a potential participant, the training agency shall notify the county in writing of the reasons for that determination.

(5) All rights and responsibilities prescribed by Section 11320.5 shall apply to all parties participating in the training component.

(c) Participants in the training program shall reflect, to the extent possible, the ethnic, gender, and age characteristics of the population of participants under this article in the county.

(d) (1) The training shall consist of all of the following:

(A) Development and evaluation of business plans.

(B) Capitalization of small businesses.

(C) Marketing strategies.

(D) Business location analysis.

(E) Direct technical assistance in the development of a small business.

(F) Other curriculum necessary to achieve proficiency in basic business skills, such as minor bookkeeping, necessary to successfully operate a small business.

(2) (A) In developing the training, the training agency shall specify what type of direct technical assistance will be provided to participants to aid in the development and continuing success of a small business.

(B) The technical assistance shall include, but need not be limited to, business counseling and assistance in applying for loans necessary to operate a small business.

(e) (1) Funding for the programs implemented pursuant to this section shall come from the Budget Act appropriation for implementation of this article.

(2) When training under this section is conducted by a community college, reimbursement shall be provided to the college through the regular reimbursement process for the Greater Avenues for Independence program.

(f) Those participants who require a capitalization loan shall apply for the loan before the conclusion of the technical assistance period.

(g) For purposes of this section, the contract amendment required in subdivision (d) of Section 11320.5 shall specify the activity to which an individual shall be reassigned if he or she does not obtain a capitalization loan within 120 days of applying for the loan, or, with good cause, does not complete the training provided for in this section, or he or she fails to obtain self-employment or other unsubsidized employment within 180 days of the completion of the training period including technical assistance.

(h) (1) (A) Notwithstanding subdivision (k) of Section 11320.3, for the purposes of this section, the training provider shall be reimbursed up to 70 percent of the fixed unit price of the training costs, upon the participant's successful completion of the training

program, including technical assistance.

(B) Completion of training of those participants who apply for a capitalization loan shall be deemed to occur upon completion of classroom training and application for a loan.

(2) At least 30 percent of the fixed unit price for the training provided under this section shall be withheld, and progress payments shall be made from that withheld portion upon evidence of self-employment or employment for 30, 90, and 180 days.

(3) For purposes of this subdivision, the department shall define acceptable evidence of self-employment.

(i) The training provider shall be reimbursed a pro rata share of the 70 percent payment if the participant fails to complete the training.

(j) Training in child care shall be conducted by training agencies which have an existing child development program.

(k) (1) In order to enhance the success of the training component authorized by this section, the department shall explore the feasibility of excluding from participants' income and resources for eligibility and grant purposes, certain business expenses and resources of participants who have completed the self-employment and business development training pursuant to this section and who have started a business. The department shall consult with county welfare departments and training agencies in exploring these exclusions.

(2) At a minimum, the department shall consider the following exclusions:

(A) The exclusion of a vehicle used for self-employment purposes from available resources.

(B) The exclusion of cash reserves reinvested into the participant's business from available resources.

(C) The deduction of transportation cost, inventory, and raw material costs from income.

(D) The exclusion of capital expenditures from available resources.

(E) The deduction of loan payments from income.

(*l*) For purposes of this section:

(1) "Training agency" means any agency with an established training program in self-employment, entrepreneurship, or business development and which agrees to participate pursuant to this section.

(2) "Training agencies" includes, but is not limited to, community colleges and private agencies.

CHAPTER 1369

An act to add Section 11745 to the Insurance Code, and to amend Sections 3702, 6310, 6318, 6319, 6320, 6354, 6427, 6428, and 6430 of, and to add Sections 6314.1, 6314.5, 6401.7, and 6428.5 to, the Labor Code, relating to occupational safety and health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 11745 is added to the Insurance Code, to read:

11745. (a) The commissioner shall, with the assistance of the Director of Industrial Relations and the statistical agent designated pursuant to Section 11751.5, review the losses in at least 50 of the largest classifications and determine, by classification, to the extent possible, the following:

(1) The types and causes of injuries which result in significant proportions of losses

(2) Whether there are significant differences in the types of injuries which contribute most significantly to losses by employer size and experience modification.

(3) Whether there are health hazards which have produced, or are likely to produce in the future, significant losses.

(4) Investments employers could make which would be effective in reducing the types of injuries causing significant proportions of losses and reducing potentially significant health hazards.

(b) The commissioner shall submit a report to the Governor and the appropriate committees of the Legislature, not later than January 1, 1992, which summarizes the information developed pursuant to this section. The report shall include recommendations concerning methods by which employers could be encouraged to make the types of investments identified as potentially effective in significantly reducing workers' compensation losses.

SEC. 2. Section 3702 of the Labor Code is amended to read:

3702. (a) A certificate of consent to self-insure may be revoked by the director at any time for good cause after a hearing. Good cause includes, among other things, the impairment of the solvency of the employer to the extent that there is a marked reduction of the employer's financial strength, failure to maintain a security deposit as required by Section 3701, failure to pay assessments of the Self-Insurers' Security Fund, frequent or flagrant violations of state safety and health orders, the failure or inability of the employer to fulfill his or her obligations, or any of the following practices by the employer or his or her agent in charge of the administration of obligations under this division:

(1) Habitually and as a matter of practice and custom inducing claimants for compensation to accept less than the compensation due or making it necessary for them to resort to proceedings against the employer to secure compensation due.

(2) Where liability for temporary disability indemnity is not in dispute, intentionally failing to pay temporary disability indemnity without good cause in order to influence the amount of permanent disability benefits due.

(3) Intentionally refusing to comply with known and legally indisputable compensation obligations.

(4) Discharging or administering his or her compensation obligations in a dishonest manner.

(5) Discharging or administering his or her compensation obligations in such a manner as to cause injury to the public or those dealing with the employer.

(b) Where revocation is in part based upon the director's finding of a marked reduction of the employer's financial strength or the failure or inability of the employer to fulfill his or her obligations, or a practice of discharging obligations in a dishonest manner, it is a condition precedent to the employer's challenge or appeal of the revocation that the employer have in effect insurance against liability to pay compensation.

(c) The director may hold a hearing to determine whether good cause exists to revoke an employer's certificate of consent to self-insure if the employer is cited for a willful, or repeat serious violation of the standard adopted pursuant to Section 6401.7 and the citation has become final.

SEC. 3. Section 6310 of the Labor Code is amended to read:

6310. (a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

(1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative.

(2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her.

(3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her

employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

SEC. 4. Section 6314.1 is added to the Labor Code, to read:

6314.1. (a) The director shall establish a list of the 100 highest hazard industries in California. To assess safety hazards and health hazards, the director shall use data from the Workers' Compensation Rating Bureau, the Division of Labor Statistics and Research, and all other appropriate information available in determining which industries shall be included on the list because of safety hazards, health hazards, or both. The list shall be initially established by January 1, 1991, and shall be reviewed, and as necessary revised, biennially.

(b) The division shall establish and maintain regional plans for allocating the division's resources for enforcement activities in addition to those required or authorized in Sections 6309, 6313, and 6320. Each regional plan shall focus on industries selected from the Director's List of High Hazard Industries in the scheduling of safety inspections and health inspections covered by the plan, as well as on any other scheduled inspections that the division determines are appropriate to the region, including the cleanup of hazardous waste sites. The sizes of business with the greatest degree of hazards within any industry selected for inspection in the regional plan shall be a major criterion in scheduling specific inspections covered by the plan.

(c) In order to maximize the impact of the regional plans, the division shall coordinate its education, training, and consulting services with the priorities established in the regional plans.

SEC. 5. Section 6314.5 is added to the Labor Code, to read:

6314.5. (a) Every inspection conducted by the division shall include an evaluation of the employer's injury prevention program established pursuant to Section 6401.7. The division shall evaluate injury prevention programs using the criteria for substantial compliance determined by the standards board. The evaluation shall include interviews with a sample of employees and the members of any employer-employee occupational safety and health committee. In any inspection which includes work for which a permit is required pursuant to Section 6500 and for which a permit has been issued pursuant to Section 6502, the evaluation of the employer's injury prevention program shall be limited to the implementation of the plan approved by the division in the issuance of the permit. Before any inspection is concluded, the division shall notify the employer of the services available from the department to assist the employer to establish, maintain, improve, and evaluate the employer's injury

prevention program.

(b) Inspections also shall include an evaluation of the following:

(1) The condition or conditions alleged in the complaint if the inspection is conducted pursuant to Section 6309.

(2) The condition or conditions involved in the accident if the inspection is conducted pursuant to Section 6313.

(3) The condition or conditions involving work for which a permit is required pursuant to Section 6500, for which notification of asbestos related work is required pursuant to Section 6501.5, or for which a report of use of a carcinogen is required pursuant to Section 9030.

(4) The condition or conditions related to significant safety or health hazards in the industries identified in the regional plans developed pursuant to Section 6314.1.

(5) The condition or conditions involved in abatement of previous violations, special orders, or action orders if the inspection is conducted pursuant to Section 6320.

(c) The scope of any inspection may be expanded beyond the evaluations specified in subdivisions (a) and (b) whenever, in the opinion of the division, a more complete inspection is warranted.

SEC. 6. Section 6318 of the Labor Code is amended to read:

6318 (a) Each citation issued under Section 6317, and each special order or action ordered pursuant to Section 6308, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director, at or near each place a violation referred to in the citation or order occurred. All postings shall be maintained for three working days, or until the unsafe condition is abated, whichever is longer. Following each investigation of an industrial accident or occupational illness, if no violations are found, the employer shall post a notice prepared by the division so indicating for three working days.

(b) When the division verifies abatement of a serious violation or an order at the time of inspection or upon reinspection, the employer shall post a notice prepared by the division so indicating for three working days. In all other cases of abatement of serious violations, the employer shall post the signed statement confirming abatement prepared pursuant to Section 6320.

SEC. 7. Section 6319 of the Labor Code is amended to read:

6319. (a) If, after an inspection or investigation, the division issues a citation pursuant to Section 6317 or an order pursuant to Section 6308, it shall, within a reasonable time after the termination of the inspection or investigation, notify the employer by certified mail of the citation or order, and that the employer has 15 working days from receipt of the notice within which to notify the appeals board that he or she wishes to contest the citation or order for any reason set forth in Section 6600 or 6600.5.

(b) Any employer served by certified mail with a notice of civil penalty may appeal to the appeals board within 15 working days from receipt of that notice for any reason set forth in Section 6600. If the

citation is issued for a violation involving the condition or operation of any machine, device, apparatus, or equipment, and a person other than the employer is obligated to the employer to repair the machine, device, apparatus, or equipment and to pay any penalties assessed against the employer, the other person may appeal to the appeals board within 15 working days of the receipt of the citation by the employer for any reasons set forth in Section 6600.

(c) The director shall promulgate regulations covering the assessment of civil penalties under this chapter which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The size of the business of the employer being charged.

(2) The gravity of the violation.

(3) The good faith of the employer, including timely abatement.

(4) The history of previous violations.

(d) Notwithstanding subdivision (c), if serious injury, illness, exposure, or death is caused by any serious, willful, or repeated violation, or by any failure to correct a serious violation within the time permitted for its correction, the penalty shall not be reduced for any reason other than the size of the business of the employer being charged. Whenever the division issues a citation for a violation covered by this subdivision, it shall notify the employer of its determination that serious injury, illness, exposure or death was caused by the violation and shall, upon request, provide the employer with a copy of the inspection report.

(e) The employer shall not be liable for a civil penalty under this part for any citation issued by a division representative providing consulting services pursuant to Sections 6354 and 6355.

(f) Whenever a citation of a self-insured employer for a willful, or repeat serious violation of the standard adopted pursuant to Section 6401.7 becomes final, the division shall notify the director so that a hearing may be held to determine whether good cause exists to revoke the employer's certificate of consent to self-insure as provided in Section 3702.

(g) Based upon the evidence, the division may propose appropriate modifications concerning the characterization of violations and corresponding modifications to civil penalties as a result thereof.

SEC. 8. Section 6320 of the Labor Code is amended to read:

6320. (a) If, after inspection or investigation, the division issues a special order, order to take special action, or a citation for a serious violation, and if at the time of inspection the order is not complied with or the violation is not abated, the division shall conduct a reinspection in the following cases:

(1) All inspections or investigations involving a serious violation of a standard adopted pursuant to Section 6401.7, a special order or order to take special action, serious violations of those orders, and serious violations characterized as repeat or willful or with abatement periods of less than six days. These reinspections shall be

conducted at the end of the period fixed for compliance with the order or abatement of the violation or within 30 days thereafter.

(2) At least 20 percent of the inspections or investigations involving a serious violation not otherwise scheduled for reinspection. These inspections shall be randomly selected and shall be conducted at the end of the period fixed for abatement of the violation or within a reasonable time thereafter.

(b) Whenever a serious violation is not abated at the time of the initial or subsequent inspection, the division shall require the employer to submit a signed statement under penalty of perjury that he or she has complied with the abatement terms within the period fixed for abatement of the violation. If the statement is not received by the division within 10 working days after the end of the period fixed for abatement, the division shall revoke any adjustments to the civil penalty based on abatement of the violation. The division shall include on the initial notice of civil penalty a clear warning of reinspection and automatic revocation of any civil penalty adjustments based on abatement for failure to submit the required statement in the time allotted, and of an additional, potentially substantial monetary penalty for failure to abate the violation. If the division fails to receive evidence of abatement or the statement within 10 working days after the end of the abatement period, the division shall notify the employer that the additional civil penalty for failure to abate, as provided in Section 6430, will be assessed retroactive to the end of the abatement period unless the employer can provide sufficient evidence that the violation was abated prior to that date. The division shall conduct a reinspection of serious violations within 45 days following the end of the abatement period whenever it still has no evidence of abatement.

SEC 9. Section 6354 of the Labor Code is amended to read:

6354. The division shall, upon request, provide a full range of occupational safety and health consulting services to any employer or employee group. These consulting services shall include providing assistance in the development of injury prevention programs for employees and employers. The highest priority for the division's consulting services shall be given to development of these programs for businesses with fewer than 250 employees in industries identified in the regional plans developed pursuant to subdivision (b) of Section 6314.1. Consulting services also may include, but are not limited to, providing employers or employees with information, advice, and recommendations on maintaining safe employment or place of employment, and on applicable occupational safety and health standards, techniques, devices, methods, practices, or programs.

SEC. 10. Section 6401.7 is added to the Labor Code, to read:

6401.7. (a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program shall be written and shall include, but not be limited to, the following elements:

(1) Identification of the person or persons responsible for implementing the program.

(2) The employer's system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.

(3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.

(4) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

(5) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

(6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

(b) The employer shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

(c) The employer shall train all employees when the training program is first established, all new employees, and all employees given a new job assignment, and shall train employees whenever new substances, processes, procedures, or equipment are introduced to the workplace and represent a new hazard, and whenever the employer receives notification of a new or previously unrecognized hazard.

(d) The employer shall keep appropriate records of steps taken to implement and maintain the program.

(e) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety and health committees to be included in the employer's injury prevention program. The board shall establish criteria for use in evaluating employer and employee occupational safety and health committees. The criteria shall include minimum duties, including the following:

(1) Review of the employer's (A) periodic, scheduled worksite inspections, (B) investigation of causes of incidents resulting in injury, illness, or exposure to hazardous substances, and (C)

investigation of any alleged hazardous condition brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspections and investigations.

(2) Upon request from the division, verification of abatement action taken by the employer as specified in division citations.

If an employer's occupational safety and health committee meets the criteria established by the board, it shall be presumed to be in substantial compliance with paragraph (5) of subdivision (a).

(g) The division shall adopt regulations specifying the procedures for selecting employee representatives for employer-employee occupational health and safety committees when these procedures are not specified in an applicable collective bargaining agreement. No employee or employee organization shall be held liable for any act or omission in connection with a health and safety committee.

SEC. 11. Section 6427 of the Labor Code is amended to read:

6427. Any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to one thousand dollars ($1,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

SEC. 12. Section 6428 of the Labor Code is amended to read:

6428. Any employer who violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, if that violation is a serious violation, shall be assessed a civil penalty of up to two thousand dollars ($2,000) for each violation. Employers who do not have an operative injury prevention program shall receive no adjustment for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

SEC. 13. Section 6428.5 is added to the Labor Code, to read:

6428.5. An employer's injury prevention program shall be deemed to be operative for the purposes of Sections 6427 and 6428 if it meets the criteria for substantial compliance established by the standards board pursuant to Section 6401.7.

SEC. 14. Section 6430 of the Labor Code is amended to read:

6430. (a) Any employer who fails to correct a violation of any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, within the period permitted for its correction shall be assessed a civil penalty of not more than one thousand dollars ($1,000) for each day during which the failure or violation continues. If the violation is a serious violation, the civil penalty assessed shall be not more than two thousand dollars ($2,000) for each day during which the failure or violation continues.

(b) Notwithstanding subdivision (a), for any employer who

submits a signed statement affirming compliance with the abatement terms pursuant to Section 6320, and is found upon a reinspection not to have abated the violation, any adjustment to the civil penalty based on abatement shall be rescinded and the additional civil penalty assessed for failure to abate shall not be adjusted for good faith of the employer or history of previous violations as provided in paragraphs (3) and (4) of subdivision (c) of Section 6319.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide needed protection for California workers as soon as possible by requiring reinspections of a place of employment by the Division of Occupational Safety and Health under specified circumstances, it is necessary for this act to take effect immediately.

CHAPTER 1370

An act to amend Sections 11800, 11998, 11998.1, 11998.2, and 11998.3 of the Health and Safety Code, relating to drug and alcohol abuse, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 11800 of the Health and Safety Code is amended to read:

11800. (a) The board of supervisors shall designate a health-related county agency or department which shall administer the county alcohol program. Except as otherwise provided in subdivision (c), the head of the designated health-related agency or department shall appoint a full-time alcohol program administrator, who shall report to the head of such agency or department through administrative channels designated by the board of supervisors. The county alcohol program shall be placed at the same administrative

level and have responsibility and authority similar to other major health programs in the county.

(b) In accordance with regulations adopted by the department, the alcohol program administrator shall be qualified by his or her ability, training, and experience to administer or coordinate and monitor the county alcohol program.

(c) The requirement in subdivision (a) that the alcohol program administrator be full time shall not apply to any of the following:

(1) Any county whose population does not exceed 200,000.

(2) Any county whose population exceeds 200,000 and whose election to appoint an alcohol program administrator for less than full time has been approved by the department. Any county may, at its option, make this election. The department may grant its approval under this subdivision if, in the opinion of the department the county's election is cost-effective and the integrity of the county program would be maintained.

In any county described in paragraph (1) or (2) the board of supervisors shall designate an alcohol program administrator who may be a person who administers other health-related programs in addition to the alcohol program.

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. If that date is not deleted or extended, then, on and after January 1, 1993, pursuant to Section 9611 of the Government Code, Section 11800 of the Health and Safety Code, as added by Section 6 of Chapter 679 of the Statutes of 1979, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2. Section 11998 of the Health and Safety Code is amended to read:

11998. This chapter sets forth the long-range goals of a five-year master plan to eliminate drug and alcohol abuse in California. The goals of this chapter are advisory, but it is the intent of the Legislature that the goals will be addressed to the extent possible by each county and by state government. These advisory goals do not amend existing law. Implementation of the goals of the master plan, after the state plan has been developed and issued, shall be subject to the budget review process.

SEC. 3. Section 11998.1 of the Health and Safety Code is amended to read:

11998.1. It is the intent of the Legislature that the following long-term five-year goals be achieved:

(a) With regard to education and prevention of drug and alcohol abuse programs, the following goals:

(1) Drug and alcohol abuse education has been included within the mandatory curriculum in kindergarten and grades 1 to 12, inclusive, in every public school in California.

(2) Basic training on how to recognize, and understand what to do about, drug and alcohol abuse has been provided to administrators

and all teachers of kindergarten and grades 1 to 12, inclusive.

(3) All school counselors and school nurses have received comprehensive drug and alcohol abuse training.

(4) Each public school district with kindergarten and grades 1 to 12, inclusive, has appointed a drug and alcohol abuse advisory team of school administrators, teachers, counselors, students, parents, community representatives, and health care professionals, all of whom have expertise in drug and alcohol abuse prevention. The team coordinates with and receives consultation from the county alcohol and drug program administrators.

(5) Every school board member has received basic drug and alcohol abuse information.

(6) Each school district has a drug and alcohol abuse specialist to assist the individual schools.

(7) Each school in grades 7 to 12, inclusive, has student peer group drug and alcohol abuse programs.

(8) Every school district with kindergarten and grades 1 to 12, inclusive, has updated written drug and alcohol abuse policies and procedures including disciplinary procedures which will be given to every school employee, every student, and every parent.

(9) The California State University and the University of California have evaluated and, if feasible, established educational programs and degrees in the area of drug and alcohol abuse.

(10) Every school district with kindergarten and grades 1 to 12, inclusive, has an established parent teachers group with drug and alcohol abuse prevention goals.

(11) Every school district has instituted a drug and alcohol abuse education program for parents.

(12) Drug and alcohol abuse training has been imposed as a condition for teacher credentialing and license renewal, and knowledge on the issue is measured on the California Basic Education Skills Test.

(13) Drug and alcohol abuse knowledge has been established as a component on standardized competency tests as a requirement for graduation.

(14) Every school district has established a parent support group.

(15) Every school district has instituted policies which address the special needs of children who have been rehabilitated for drug or alcohol abuse problems and who are reentering school. These policies shall consider the loss of schooltime, the loss of academic credits, and the sociological problems associated with drug and alcohol abuse, its rehabilitation, and the educational delay it causes.

(16) The number of drug and alcohol abuse related incidents on school grounds has decreased by 20 percent.

(b) With regard to community programs, the following goals:

(1) Every community-based social service organization that receives state and local financial assistance has drug and alcohol abuse information available for clients.

(2) All neighborhood watch, business watch, and community

conflict resolution programs have included drug and alcohol abuse prevention efforts.

(3) All community-based programs that serve schoolaged children have staff trained in drug and alcohol abuse and give a clear, drug- and alcohol-free message.

(c) With regard to drug and alcohol abuse programs of the media, the following goals:

(1) The state has established a comprehensive media campaign that involves all facets of the drug and alcohol abuse problem, including treatment, education, prevention, and intervention that will result in increasing the public's knowledge and awareness of the detrimental effects of alcohol and drug use, reducing the use of alcohol and drugs, and increasing healthy lifestyle choices.

(2) The department on a statewide basis, and the county board of supervisors or its designees at the local level, have:

(A) Assisted the entertainment industry in identifying ways to effectively use the entertainment industry to encourage lifestyles free of substance abuse.

(B) Assisted the manufacturers of drug and alcohol products in identifying ways to effectively use product advertising to discourage substance abuse.

(C) Assisted television stations in identifying ways to effectively use television programming to encourage lifestyles free of substance abuse.

(3) A statewide cooperative fundraising program with recording artists and the entertainment industry has been encouraged to fund drug and alcohol abuse prevention efforts in the state.

(d) With regard to drug and alcohol abuse health care programs, the following goals:

(1) The number of drug and alcohol abuse-related medical emergencies has decreased by 4 percent per year.

(2) All general acute care hospitals and AIDS medical service providers have provided information to their patients on drug and alcohol abuse.

(3) The Board of Medical Quality Assurance, the Psychology Examining Committee, the Board of Registered Nursing, and the Board of Behavioral Science Examiners have developed and implemented the guidelines or regulations requiring drug and alcohol abuse training for their licensees, and have developed methods of providing training for those professionals.

(e) With regard to private sector drug and alcohol abuse programs, the following goals:

(1) A significant percentage of businesses in the private sector have developed personnel policies that discourage drug and alcohol abuse and encourage supervision, training, and employee education.

(2) Noteworthy and publicly recognized figures and private industry have been encouraged to sponsor fundraising events for drug and alcohol abuse prevention.

(3) Every public or private athletic team has been encouraged to

establish policies forbidding drug and alcohol abuse.

(4) The private sector has established personnel policies that discourage drug and alcohol abuse but encourage treatment for those employees who require this assistance.

(f) With regard to local government drug and alcohol abuse programs, the following goals:

(1) Every county has a five-year master plan to eliminate drug and alcohol abuse developed jointly by the county-designated alcohol and drug program administrators, reviewed jointly by the advisory boards set forth in paragraph (2), and approved by the board of supervisors. For those counties in which the alcohol and drug programs are jointly administered, the administrator shall develop the five-year master plan. To the degree possible, all existing local plans relating to drug or alcohol abuse shall be incorporated into the master plan.

(2) Every county has an advisory board on alcohol problems and an advisory board on drug programs. The membership of these advisory boards is representative of the county's population and is geographically balanced. To the maximum extent possible the county advisory board on alcohol problems and the county advisory board on drug programs will have representatives of the following:

(A) Law enforcement.

(B) Education.

(C) The treatment and recovery community, including a representative with expertise in AIDS treatment services.

(D) Judiciary.

(E) Students.

(F) Parents.

(G) Private industry.

(H) Other community organizations involved in drug and alcohol services.

(I) A representative of organized labor responsible for the provision of Employee Assistance Program services.

If any of these areas are not represented on the advisory bodies, the administrator designated in paragraph (1) shall solicit input from a representative of the nonrepresented area prior to the development of a master plan pursuant to paragraph (1).

(3) Every county public social service agency has established policies that discourage drug and alcohol abuse and encourage treatment and recovery services when necessary.

(4) Every local unit of government has an employee assistance program that addresses drug and alcohol abuse problems.

(5) Every local unit of government has considered the potential for drug and alcohol abuse problems when developing zoning ordinances and issuing conditional use permits.

(6) Every county master plan includes treatment and recovery services.

(6.5) Every county master plan includes specialized provisions to ensure optimum alcohol and drug abuse service delivery for

handicapped and disabled persons.

(7) Every local unit of government has been encouraged to establish an employee assistance program that includes the treatment of drug and alcohol abuse-related programs.

(8) Every local governmental social service provider has established a referral system under which clients with drug and alcohol abuse problems can be referred for treatment.

(9) Every county drug and alcohol abuse treatment or recovery program which serves women gives priority for services to pregnant women.

(10) Every alcohol and drug abuse program provides acquired immune deficiency syndrome (AIDS) information to all program participants.

(g) With regard to state and federal government drug and alcohol abuse programs, the following goals:

(1) The Department of Alcoholic Beverage Control has informed all alcohol retailers of the laws governing liquor sales and has provided training available to all personnel selling alcoholic beverages, on identifying and handling minors attempting to purchase alcohol.

(2) The Office of Criminal Justice Planning has required all applicants for crime prevention and juvenile justice and delinquency prevention funds to include drug and alcohol abuse prevention efforts in their programs.

(3) All county applications for direct or indirect drug and alcohol services funding from the department include a prevention component.

(4) The Superintendent of Public Instruction has employed drug and alcohol abuse school prevention specialists and assisted local school districts with the implementation of prevention programs.

(5) The State Department of Mental Health has staff trained in drug and alcohol abuse prevention who can assist local mental health programs with prevention efforts.

(6) The Department of the California Highway Patrol, as permitted by the United States Constitution, has established routine statewide sobriety checkpoints for driving while under the influence.

(7) The Department of Corrections and the Department of the Youth Authority have provided drug and alcohol abuse education and prevention services for all inmates, wards, and parolees. Both departments have provided drug and alcohol abuse treatment services for any inmate, ward, or parolee determined to be in need of these services, or who personally requests these services.

(8) The Department of Motor Vehicles has distributed prevention materials with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the Department of Motor Vehicles.

(9) Federal prevention programs have been encouraged to follow the master plan.

(10) State licensing and program regulations for drug and alcohol

abuse treatment programs have been consolidated and administered by one state agency.

(11) State treatment funding priorities have been included to specially recognize the multiple diagnosed client who would be eligible for services from more than one state agency.

(12) Every state agency has formalized employee assistance programs that include the treatment of drug and alcohol abuse-related problems.

(13) The state master plan includes specialized provisions to ensure optimum drug and alcohol abuse service delivery for handicapped and disabled persons.

(h) With regard to private sector direct service providers, the following goals:

(1) Drinking drivers programs have provided clear measurements of successful completion of the program to the courts for each court-ordered client.

(2) All drug and alcohol abuse treatment programs provide poly drug abuse services or have an established referral system to ensure clients receive all needed services.

(3) Each county to the extent possible provides localized alcohol and drug treatment and recovery services designed for individuals seeking assistance for polydrug abuse.

(4) Adequate nonresidential and residential services are available statewide for juveniles in need of alcohol or drug abuse services.

(5) Each provider of alcohol or drug services has been certified by the state.

(6) Drug and alcohol abuse treatment providers provide general acquired immune deficiency syndrome (AIDS) information during treatment.

(i) With regard to supply regulation and reduction in conjunction with drug and alcohol abuse, the following goals:

(1) Each county has a drug and alcohol abuse enforcement team, designated by the board of supervisors. This team includes all components of the criminal justice system. This team shall be responsible to the board of supervisors, shall advise the drug and alcohol abuse advisory board and the county on all criminal justice matters relating to drug and alcohol abuse, and shall advise the county alcohol and drug programs administrators regarding the development of the five-year master plan.

(2) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, the Department of the California Highway Patrol, the Office of Traffic Safety, and the Department of Justice have established a state level drug and alcohol abuse enforcement team that includes representatives from all facets of criminal justice. The lead agency for the enforcement team has been designated by the Governor. This team advises the state and assists the local teams.

(3) The Office of Criminal Justice Planning, the Youth and Adult Correctional Agency, and the Department of Justice have, as a priority when determining training subjects, prevention seminars on

drug and alcohol abuse. The Commission on Peace Officer Standards and Training has, as a priority when determining training subjects, drug and alcohol enforcement.

(4) The Department of the California Highway Patrol, as permitted by the United States Constitution, will in conjunction with establishing sobriety checkpoints statewide, assist local law enforcement agencies with the establishment of local programs.

(5) Counties with more than 10 superior court judgeships have established programs under which drug cases receive swift prosecution by well-trained prosecutors before judges who are experienced in the handling of drug cases.

(6) The courts, when determining bail eligibility and the amount of bail for persons suspected of a crime involving a controlled substance, shall consider the quantity of the substance involved when measuring the danger to society if the suspect is released.

(7) Drunk driving jails have been established that provide offender education and treatment during incarceration.

(8) All probation and parole officers have received drug and alcohol abuse training, including particular training on drug recognition.

(9) All parolees and persons on probation with a criminal history that involves drug or alcohol abuse have conditions of parole or probation that prohibit drug and alcohol abuse.

(10) The Judicial Council has provided training on drug and alcohol abuse for the judges.

(11) The courts, when sentencing offenders convicted of selling drugs, consider "street value" of the drugs involved in the underlying crime.

(12) Judges have been encouraged to include drug and alcohol abuse treatment and prevention services in sentences for all offenders. Judges are requiring, as a condition of sentencing, drug and alcohol abuse education and treatment services for all persons convicted of driving under the influence of alcohol or drugs.

(13) Juvenile halls and jails provide clients with information on drug and alcohol abuse.

(14) The estimated number of clandestine labs operating in California has decreased by 10 percent per year.

(15) Each local law enforcement agency has developed. with the schools, protocol on responding to school drug and alcohol abuse problems.

(16) Every county has instituted a mandatory driving while under the influence presentence offender evaluation program.

SEC. 4. Section 11998.2 of the Health and Safety Code is amended to read:

11998.2. (a) "Department," as used in this division, means the State Department of Alcohol and Drug Programs.

(b) The board of supervisors of each county is encouraged to prepare and adopt a county drug and alcohol abuse master plan, pursuant to paragraph (1) of subdivision (f) of Section 11998.1, that

addresses as many of the long-range goals set forth in Section 11998.1 as possible. It is the intent of the Legislature that every county master plan include quantitative outcome objectives that, at a minimum, measure progress in the areas of prevention, education, enforcement, and treatment. It is the intent of the Legislature that these objectives include measurements of:

(1) The reduction of arrests for driving under the influence of drugs or alcohol, or both.

(2) The reduction of alcohol and drug-related arrests.

(3) Increased public education on the dangers of substance abuse and the available prevention techniques including specific measurements of children, parents, and teachers who have received this education.

(4) The reduction of alcohol- and drug-related deaths and injuries.

(5) The increased number of persons successfully completing drug and alcohol abuse services.

If a county master plan is adopted, the board of supervisors or its designee shall, in conjunction with the county advisory boards as established pursuant to paragraph (2) of subdivision (f) of Section 11998.1, annually assess the progress of the county in reaching its long-range goals.

(c) Every county or public or private agency within a county that applies for state or local assistance funds for drug and alcohol abuse efforts in their program, may address, to the extent possible, any long-range goals set forth in a county drug and alcohol abuse master plan established pursuant to subdivision (b), and funding priority may be given to those entities which address these goals within their respective programs.

(d) The Governor shall designate one state agency to act as the lead agency on all drug and alcohol abuse matters.

(e) Every state agency that contracts or grants money to local jurisdictions or programs for drug and alcohol abuse services shall require the submission and shall review the contents of an approved county drug and alcohol abuse master plan, to the extent a plan has been adopted pursuant to subdivision (b).

(f) Commencing on January 1, 1990, every state agency that offers drug and alcohol abuse services or financial assistance shall report to the Legislature annually on its efforts to achieve the master plan goals provided in Section 11998.1. Individual agencies may report separately or in combination with other state agencies.

(g) The department shall send copies of this division to all state-funded social service programs that provide drug and alcohol abuse services.

(h) The department shall maintain copies of every county drug and alcohol abuse master plan for review by other state agencies and the Legislature.

(i) The Governor shall designate one statewide resource center to coordinate efforts of other resource centers statewide and to coordinate with local government and assist in their preparation of

drug and alcohol abuse master plans.

(j) The Senate Office of Research shall prepare, on or before June 30, 1989, a summary of drug and alcohol abuse laws for use by the Legislature, the department, and all other related state agencies in oversight of drug and alcohol abuse programs, and in evaluating the need for statutory changes. To the degree possible this summary shall be available to the public.

(k) Commencing June 30, 1989, the department shall maintain an annually updated listing of all drug and alcohol abuse programs provided or funded by the state. Every other state agency shall regularly provide the department with current information on programs they fund or provide.

(*l*) The Governor's Policy Council on Drug and Alcohol Abuse shall review and consider all of the goals contained in Section 11998.1.

(m) After January 1, 1992, the Auditor General shall audit the department to determine the state's progress and to the degree possible, the counties' progress toward meeting the master plan objectives set forth by this division. On or before January 1, 1993, the Auditor General shall report the findings resulting from these audits to the Legislature.

SEC. 5. Section 11998.3 of the Health and Safety Code is amended to read:

11998.3. Priority in allocating state funds for substance abuse to law enforcement agencies shall be given to those counties which have established a drug and alcohol abuse enforcement team, comprised of representatives of all law enforcement agencies within the county, including the courts. The drug and alcohol abuse enforcement team shall adopt measures to coordinate the efforts of drug and alcohol abuse law enforcement agencies within the county.

SEC. 6. (a) The Legislature finds and declares all of the following:

(1) Alcohol problems cost the State of California eleven billion seven hundred million dollars ($11,700,000,000) each year in lost worker productivity, health and medical costs, motor vehicle accidents, violent crimes, social responses, and fire losses.

(2) Comparable losses due to drug abuse are an additional six billion dollars ($6,000,000,000).

(3) It is conservatively estimated that 3.8 percent of all Californians abuse drugs to the degree that services are needed. The 1986 incidence data reveals that there are 991,000 active drug abusers in this state, and 27 percent of this number are heroin users. Active drug abusers are defined as persons using drugs for nonmedical purposes on a daily basis.

(4) In 1987, over 270,500 arrests were made for drug-involved crimes.

(5) The problem of gangs and drugs in the Greater Los Angeles area has reached crisis proportions. In 1987, gang-related homicides totaled 387, an average of more than one per day. As of November 1988, gang-related homicides had increased over 24 percent from the

previous year. The Los Angeles County Sheriff reports that over 1,400 murders committed within the last five years were gang-related. According to Los Angeles County Department of Health Services, cocaine-related deaths are up over 200 percent since 1985. The National Institute on Drug Abuse reports that one-fourth of the country's cocaine-related deaths occur in the Los Angeles area.

(6) In the City of Los Angeles, there are approximately 250 gangs with a total membership in excess of 30,000. Los Angeles police officials stated that narcotics arrests more than doubled from 1981 to 1987, from 24,662 to 53,801. The amount of cocaine seized by police in the 10-year period between 1976 and 1986 increased by over 19,250 percent. Gang members who once carried "saturday night specials," now select weapons such as Uzis and AK-47s.

(7) The overall increase in gang and drug-related activity in California's southwest border towns is demonstrated by the alarming level of related crime. The San Diego Police Department reports that in the first six months of 1988, 24 homicides were directly related to gang-involved narcotics activity. Additionally, there were 134 shootings, 87 assaults, and 23 separate incidents of shooting into a dwelling that were directly attributed to gangs and narcotics.

(8) Youth involvement in drug crimes is expanding. Whereas 252 juveniles were arrested in 1980 on drug-related charges, there were 410 juveniles arrested on similar charges in 1987 within the City of San Diego. County probation officials report that over 80 percent of the youths placed in its youth camps were involved in drugs. Furthermore, probation officials estimate that over 70 percent of the juvenile wards come from homes where the parents are involved with drugs themselves.

(9) Prior to the 1988 legislation establishing a long-range master plan to reduce drug and alcohol abuse, California lacked the coordination and avenues of communication necessary to combat our substance abuse problem. The master plan has provided the foundation for a cooperative effort, involving the national, state, local, and community levels to fully utilize insufficient resources to fight our war on drugs.

(10) Similar to California's master plan, the federal "Anti-Drug Abuse Act of 1988" which passed both houses of Congress and was signed by the President, set out a comprehensive strategy in waging war on the drug menace, including education, user sanctions, interdiction, eradication, and greater public awareness and involvement.

(11) Part of the overall national strategy involves increased aid, by way of redirected federal resources, to state and local law enforcement efforts through the designation of specific trouble spots as "high intensity drug trafficking areas," an authority granted to the drug czar under Section 1005 of the 1988 act.

(12) Though the sending of immediate aid to Columbia for purposes of eradication and interdiction is laudable, its effectiveness is reduced without corresponding designation of "high intensity drug

trafficking areas" and the resultant federal support to state and local law enforcement and social service agencies to deal with the indigenous side of the drug problem.

(13) California, specifically Los Angeles and the southwest border areas, constitutes the point of entry for as much as 50 percent of the country's cocaine, the manufacturing center for amphetamines and PCP, the major center of illicit drug distribution for the nation, and an area, as is the case in most large cities, where people are continuously victimized by criminals who use drugs.

(14) As Los Angeles contains neighborhoods that are as dangerous and as out-of-control of local law enforcement as any part of Columbia, and since Los Angeles and southwest border areas do not have the resources to fight the drug war for the nation, it is recognized that Los Angeles was specifically in mind when the designation criteria were written.

(15) Just as the elaborate and violent activities of Columbia's drug cartels reach into communities throughout the United States, Los Angeles' Bloods and Crips Drug Gangs have expanded operations into more than 50 cities nationwide, in effect, constituting the wholesale and retail distributors for the cocaine of Columbia's drug lords.

(16) Local law enforcement and social service agencies, despite strenuous efforts, have been unable to stem the flow of drugs, and stop the violence. California's master plan for drug and alcohol abuse coupled with federal reallocation of resources pursuant to the "high intensity drug trafficking area" designation will offer the necessary resources to assist local agencies to keep pace with the illicit drug industry in a timely and consistent manner.

(17) If California is to continue its efforts for implementation of the master plan for drug and alcohol abuse, and keep pace with the necessity for increased law enforcement activities in pursuit of illicit drug activity and related violence, the state must do everything in its power to take full advantage of state and federal legislation which supplies the tools needed in fighting the drug menace, including presidential designation of "high intensity drug trafficking areas" pursuant to Section 1005 of the "Anti-Drug Abuse Act of 1988."

(b) It is therefore declared that the Legislature of the State of California urges the President of the United States to designate Los Angeles County and the southwest border areas of California as "high intensity drug trafficking areas," pursuant to Section 1005 of the "Anti-Drug Abuse Act of 1988" to enable California to do its part for the nation in eradicating the drug menace from our society.

SEC. 7. Upon passage of this measure, the Secretary of State shall transmit a copy of this legislation to the President and the Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress.

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. Since California will lose the drug war without further assistance from the national level, and with the recent designation of federal resources for state assistance, it is imperative that California request the necessary resources while they are available and to ensure complete implementation of the 5-year master plan to eliminate drug and alcohol abuse, it is necessary that this act go into immediate effect.

CHAPTER 1371

An act to amend Sections 708, 985, 2653, and 2655 of, and to repeal Section 2653.5 of, the Unemployment Insurance Code, relating to disability insurance, and making an appropriation therefor.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 708 of the Unemployment Insurance Code is amended to read:

708. (a) Any individual who is an employer under this division or any two or more individuals who have so qualified may file with the director a written election that their services shall be deemed to be services performed by individuals in employment for an employer for all the purposes of this division. Upon the approval of the election by the director the services of such individuals shall be deemed to constitute employment for an employer for all the purposes of this division. Regardless of their actual earnings, for the purposes of computing benefit rights and contributions under this division, they shall be deemed to have received remuneration for each calendar quarter in whichever is the higher of the following:

(1) The highest maximum amount stated in Section 1280.

(2) The highest maximum amount stated in Section 2655.

(b) Any individual who is an employer under this division or any two or more individuals who have so qualified may file with the director a written election that their services shall be deemed to be services performed by individuals in employment for an employer for the purposes of Part 2 (commencing with Section 2601) only of this division. Upon the approval of the election by the director the services of such individuals shall be deemed to constitute employment for an employer for the purposes of Part 2 (commencing with Section 2601) only of this division. Regardless of their actual earnings, for the purposes of computing disability benefit rights and worker contributions, they shall be deemed to have received remuneration for each calendar quarter in the highest of the maximum amounts stated in Section 2655.

(c) Contributions required under this division are payable on and after the date stated in the approval of the director. The director may levy assessments under this division for any amount due under this section.

(d) No benefits shall be paid to any individual based upon remuneration deemed to have been received pursuant to this section unless all contributions due with respect to all remuneration deemed to have been received by such individual pursuant to this section have been paid to the department.

SEC. 2. Section 985 of the Unemployment Insurance Code is amended to read:

985. Section 984 shall not apply to that part of the remuneration which, after remuneration with respect to employment equal to four times the maximum weekly benefit for each calendar year specified in Section 2655 multiplied by 13 and divided by 55 percent has been paid to an individual by an employer, is paid to the individual by the employer.

SEC. 3. Section 2653 of the Unemployment Insurance Code is amended to read:

2653. The maximum amount of benefits payable to an individual during any one disability benefit period shall be 52 times his or her weekly benefit amount, but in no case shall the total amount of the benefits payable be more than the total wages paid to the individual during his or her disability base period. If the benefit is not a multiple of one dollar ($1) it shall be computed to the next higher multiple of one dollar ($1).

This section shall apply to periods of disability commencing on or after January 1, 1984.

SEC. 4. Section 2653.5 of the Unemployment Insurance Code is repealed.

SEC. 5. Section 2655 of the Unemployment Insurance Code is amended to read:

2655. (a) Except as provided in subdivisions (b) and (c), an individual's "weekly benefit amount" shall be the amount appearing in column B in the table set forth in this subdivision on the line of which in column A of the table there appears the wage bracket containing the amount of wages paid to the individual for employment by employers during the quarter of his or her disability base period in which wages were the highest

A Amount of wages in highest quarter	B Weekly benefit amount
$75–1,149.99	$50
1,150–1,174.99	51
1,175–1,199.99	52
1,200–1,224.99	53
1,225–1,249.99	54
1,250–1,274.99	55

1,275–1,299.99	56
1,300–1,324.99	57
1,325–1,349.99	58
1,350–1,374.99	59
1,375–1,399.99	60
1,400–1,424.99	61
1,425–1,449.99	62
1,450–1,474.99	63
1,475–1,499.99	64
1,500–1,524.99	65
1,525–1,549.99	66
1,550–1,574.99	67
1,575–1,599.99	68
1,600–1,624.99	69
1,625–1,649.99	70
1,650–1,674.99	71
1,675–1,699.99	72
1,700–1,724.99	73
1,725–1,749.20	74

(b) For periods of disability commencing on or after January 1, 1990, and prior to January 1, 1991, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be 55 percent of these wages divided by 13, but not exceeding two hundred sixty-six dollars ($266) or the maximum workers' compensation temporary disability indemnity weekly benefit amount, whichever is less. If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

(c) For periods of disability commencing on or after January 1, 1991, if the amount of wages paid an individual for employment by employers during the quarter of his or her disability base period in which these wages were highest exceeds one thousand seven hundred forty-nine dollars and twenty cents ($1,749.20), the weekly benefit amount shall be 55 percent of these wages divided by 13, but not exceeding three hundred forty-three dollars ($343) or the maximum workers' compensation temporary disability indemnity weekly benefit amount, whichever is less. If the benefit payable under this subdivision is not a multiple of one dollar ($1), it shall be computed to the next higher multiple of one dollar ($1).

SEC. 6. Sections 1, 2, and 5 of this act shall become operative with respect to periods of disability commencing on or after January 1, 1990. The provisions of law in effect prior to the amendment of Section 2655 of the Unemployment Insurance Code made by this act shall continue to be applicable with respect to periods of disability commencing prior to January 1, 1990.

SEC. 7. Sections 1, 2, 5, and 6 of this act shall take effect only if

a bill of the 1989–90 Regular Session, which increases the maximum weekly benefit amount for workers' compensation temporary disability indemnity, is chaptered and takes effect on or before January 1, 1990.

CHAPTER 1372

An act to add and repeal Article 6.5 (commencing with Section 1569.69) of Chapter 3.2 of Division 2 of the Health and Safety Code, relating to residential care facilities for the elderly, and making an appropriation therefor.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Article 6.5 (commencing with Section 1569.69) is added to Chapter 3.2 of Division 2 of the Health and Safety Code, to read:

Article 6.5. Special Care Model Projects

1569.69. The Legislature hereby finds and declares all of the following:

(a) Persons with the medical diagnosis of dementia, including, but not limited to, Alzheimer's disease, have difficulty finding facilities which provide appropriate care and supervision or which will serve this client population.

(b) Persons with dementia may manifest their disease by wandering, disruption of normal activity and sleep patterns, or exhibiting behavior which, if not managed in an appropriate manner, can result in aggression, combativeness, or other inappropriate behaviors.

(c) Persons with dementia may benefit from an environment which provides perimeter security, yet freedom of movement within their environment.

(d) Only certain psychiatric or skilled nursing facilities are currently allowed by law to have secured environments, yet persons with dementia are not considered to have a mental illness, nor do they necessarily need 24-hour skilled nursing care.

(e) This can result in overdependence upon and inappropriate use of chemical or physical restraints to control the behavior of persons with dementia.

(f) Existing law which prohibits secured or locked perimeters in residential care facilities for the elderly may cause persons with dementia to be placed in more restrictive and sometimes inappropriate levels of care.

(g) It is, therefore, the intent of the Legislature to amend existing law and allow locked or secured perimeters, which may include exit doors, in selected licensed residential care facilities for the elderly in a pilot project to determine the appropriateness of generally allowing locked or secured perimeters in all such facilities which care for persons with dementia.

1569.691. (a) The department, shall select and monitor facilities to participate in a program, as model projects, to determine the appropriateness of allowing secured perimeters in residential care facilities for the elderly for persons with dementia, including, but not limited to, Alzheimer's disease.

(b) Model projects shall commence operation during the 1990 calendar year and shall remain in operation until January 1, 1994. The program shall consist of six facilities or sites.

(1) Three sites shall be residential care facilities for the elderly which specialize in caring for persons with the medical diagnosis of dementia and which have secured perimeters.

(2) Three sites shall be residential care facilities for the elderly which specialize in caring for persons with the medical diagnosis of dementia and which use door alarms or wrist bands, or other such devices, to provide a safe and secure environment.

(c) The department shall develop criteria and standards for participation in the pilot project, which shall include, but not be limited to, the following:

(1) The facility shall be a residential care facility for the elderly, with licenses in good standing. The facilities must maintain substantial compliance with all applicable regulations and statutes during the project.

(2) The facility shall have or develop a special program for persons with dementia which shall be reviewed by the department and by the Alzheimer's Diagnostic and Treatment Centers established pursuant to Section 413.

(3) The facility shall submit to the department a plan of operation which includes a description of the type of security, the method used to provide access to the department, visitors, community and advocacy groups, an emergency evacuation plan which has been approved by the local fire authority, staffing standards, qualifications and training of staff, and any other items deemed to be necessary by the department.

(4) The facility shall obtain the appropriate fire clearance from the local fire authority.

(5) Each facility shall have admission, retention, and transfer criteria to select residents who may be placed in the facility during the project. A resident shall not have other mental or physical health care needs beyond those caused by the dementing illness which would otherwise disqualify that person for acceptance or retention in a residential care facility for the elderly.

(6) The facility shall have a consulting physician to review the medical condition of residents.

(7) The facility shall conduct an admission assessment of the resident prior to admission, which shall include:

(A) A minimental test to assess the resident's level of cognitive impairment.

(B) An activities of daily living assessment.

(C) A behavioral assessment for the purpose of designing and implementing an individualized care plan of therapeutic activities.

The department shall develop criteria for granting exemptions from the requirements of this paragraph for circumstances under which emergency placement is necessary.

(8) The facility shall provide a program of planned therapeutic activities which take place throughout the waking hours which include a minimum of 40 percent large motor activities and the balance to be perceptual and sensory stimulation.

(9) The facility shall ensure that all staff who work with the residents go through training consisting of at least 25 hours covering the following issues:

(A) Facility orientation.

(B) Normal aging process.

(C) Characteristics of Alzheimer's disease and related dementias.

(D) Activities for persons with dementia.

(E) Communication with residents with dementia.

(F) Understanding the family of residents with dementia.

(G) Medications and misuse.

(H) Aid to daily living.

(I) Staff burnout.

(J) Developing problem-solving skills.

(10) The facility shall ensure that the staff receives ongoing continuing education in the care of residents with dementia.

(11) The facility shall provide an ongoing assessment of the resident to monitor problem behaviors and medical condition.

(12) The facility shall provide monthly family council meetings.

(d) The department shall consult with the Alzheimer's disease diagnostic and treatment centers funded by the State Department of Health Services pursuant to Section 413 or other agencies deemed appropriate to establish evaluative criteria for appropriate diagnosis, assessment, treatment, and discharge plans for residents of facilities participating in the model projects.

(e) The Health and Welfare Agency's Alzheimer's Disease and Related Disorders Advisory Group, or any other entity, may provide assistance to the department, as requested by the department.

1569.692. (a) Notwithstanding paragraph (6) of subdivision (a) of Section 87572 of the California Code of Regulations, participating residential care facilities for the elderly may operate with a secured or locked perimeter if all of the following conditions are met:

(1) The resident is never locked in his or her room.

(2) With respect to residential care facility for the elderly sites, the resident is never physically or chemically restrained. For purposes of this section "chemically restrained" does not include

medication prescribed by a physician and surgeon which is an essential component of the resident's treatment plan and which is generally recognized by the Alzheimer's disease diagnostic and treatment centers established pursuant to Section 413 as appropriate treatment for a person with a medical diagnosis of dementia.

(3) With respect to residential care facility for the elderly sites, the resident has freedom of movement within the secured perimeter.

(4) Evidence shall be provided in the resident's file that a formal mental status questionnaire has been administered to rule out mental illness and to determine cognitive level.

(5) Evidence shall be provided in the resident's file that the following diagnostic tests have been given, as appropriate, to rule out reversible disease:

(A) At least one type of brain imaging test.

(B) A complete blood count.

(C) Serum glucose.

(D) Serum urea nitrogen.

(E) Creatinine level.

(F) Thyroid function.

(G) Seriology test for syphilis.

(H) Determination of B-12 and Folate levels.

(I) Urinalysis.

(J) Other tests indicated by medical history or physician and surgeon.

The department, in consultation with the Alzheimer's disease diagnostic and treatment centers, established pursuant to Section 413, may require other tests or change the tests required in this paragraph to reflect advances in diagnostic technology.

(b) For puposes of this section "secured perimeter" means that the external boundary of the facility, including yard areas, are functionally locked to the resident. If a facility provides multiple levels of care or has separate and distinct sections to the physical layout, each level or section licensed by the department may be secured. The purpose of the secured perimeter is to provide free movement in a safe area to residents within the boundaries of the facility, including yard areas, to prevent wandering.

1569.693. For purposes of this article, "functionally locked" means that the perimeter of the facility is secured by means which are beyond the functional capacity of the resident to negotiate or deduce.

1569.694. The department shall report its findings and recommendations to the Legislature by January 1, 1993. The recommendations shall include whether to allow secured or locked residential care facilities for the elderly throughout the state, and, if so, the method or methods of security to be allowed, admission and retention criteria for residents who can be placed in secure residential care facilities for the elderly, any limits on the size of the facility which may be secured, staffing standards, training and

qualifications of staff and program content.

The department shall also report on the success of the model projects by measuring all of the following:

(1) The extent to which the three model project sites with a secured perimeter provide an environment which minimizes acting out or other inappropriate behavior compared with the other model project sites.

(2) The extent to which the use of a secured perimeter environment results in a decrease or elimination of the use of behavioral medication traditionally used to treat residents with dementia compared to the other model project sites.

(3) A comparison of the number of incidences of wandering in the model project sites with a secured perimeter versus model project sites using door alarms, wrist bands, or other such devices, and the extent to which staff time is diverted away from direct care.

1569.695. Guidelines developed to implement this model project shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code).

1569.696. All statutes and regulations applicable to residential care facilities for the elderly shall apply to the model project facilities participating in this model project, except to the extent that they are inconsistent with this article.

1569.697. This article shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute which is chaptered prior to January 1, 1994, deletes or extends that date.

SEC. 2. The sum of sixty-two thousand five hundred dollars ($62,500) per year, for three years commencing with the 1990 calendar year, is hereby appropriated to the State Department of Social Services from the General Fund for purposes 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1373

An act to amend Section 436.2 of the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 436.2 of the Health and Safety Code is amended to read:

436.2. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter and of Section 32127.2.

(a) "Bondholder" means the legal owner of a bond or other evidence of indebtedness issued by a political subdivision or a nonprofit corporation.

(b) "Borrower" means a political subdivision or nonprofit corporation which has secured or intends to secure a loan for the construction of a health facility.

(c) "Construction, improvement, or expansion" or "construction, improvement, and expansion" includes construction of new buildings, expansion, modernization, renovation, remodeling and alteration of existing buildings, acquisition of existing buildings or health facilities, and initial or additional equipping of any of these buildings.

In connection therewith, "construction, improvement, or expansion" or "construction, improvement, and expansion" includes the cost of construction or acquisition of all structures, including parking facilities, real or personal property, rights, rights-of-way, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest (prior to, during and for a period after completion of the construction), provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing or incident to the construction; or the financing of the construction or acquisition.

(d) "Council" means the Advisory Health Council.

(e) "Debenture" means any form of written evidence of indebtedness issued by the State Treasurer pursuant to this chapter, as authorized by Section 4 of Article XVI of the California Constitution.

(f) "Fund" means the Health Facility Construction Loan Insurance Fund.

(g) "Health facility" means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including but not limited to public health centers, community mental health centers, facilities for the developmentally disabled, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to developmentally disabled persons, facilities for the treatment of chemical dependency, including a community care facility, licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2, a clinic, as defined pursuant to Chapter 1 (commencing with Section 1200) of Division 2, an alcoholism recovery facility, defined pursuant to Section 11834.11, and a structure located adjacent or attached to another type of health facility and which is used for storage of materials used in the treatment of chemical dependency, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses' home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. "Health facility" also means an adult day health center and a multilevel facility. Except for facilities for the developmentally disabled, facilities for the treatment of chemical dependency, or a multilevel facility, or as otherwise provided in this section, "health facility" does not include any institution furnishing primarily domiciliary care.

Unless the context dictates otherwise, "health facility" includes a political subdivision of the state or nonprofit corporation which operates a facility included within the definition set forth in this subdivision.

(h) "Office" means the Office of Statewide Health Planning and Development.

(i) "Lender" means the provider of a loan and its successors and assigns.

(j) "Loan" means money or credit advanced for the costs of construction or expansion of the health facility, and includes both initial loans and loans secured upon refinancing and may include both interim, or short-term loans, and long-term loans. A duly authorized bond or bond issue, or an installment sale agreement, may constitute a "loan."

(k) "Maturity date" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for by the terms of the loan.

(*l*) "Mortgage" means a first mortgage on real estate. "Mortgage" includes a first deed of trust.

(m) "Mortgagee" includes a lender whose loan is secured by a mortgage. "Mortgagee" includes a beneficiary of a deed of trust.

(n) "Mortgagor" includes a borrower, a loan to whom is secured

by a mortgage, and the trustor of a deed of trust.

(o) "Nonprofit corporation" means any corporation formed under or subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or its equivalent under the laws of the state of incorporation, organized for the purpose of owning and operating a health facility.

(p) "Political subdivision" means any city, county, city and county, joint powers entity, local hospital district, or the California Health Facilities Authority.

(q) "Project property" means the real property upon which the health facility is, or is to be, constructed, improved, or expanded, and also means the health facility and the initial equipment in such health facility.

(r) "Public health facility" means any health facility which is or will be constructed for and operated and maintained by any city, county, city and county, or local hospital district

(s) "Adult day health center" means a facility defined under subdivision (b) of Section 1570.7, which provides adult day health care, as defined under subdivision (a) of Section 1570.7.

(t) "Multilevel facility" means an institutional arrangement where a residential facility for the elderly is operated as a part of, or in conjunction with, an intermediate care facility, a skilled nursing facility, or a general acute care hospital. "Elderly," for the purposes of this subdivision, means a person 62 years of age or older.

SEC. 2. Section 436.2 of the Health and Safety Code is amended to read:

436.2. Unless the context otherwise requires, the definitions in this section govern the construction of this chapter and of Section 32127.2.

(a) "Bondholder" means the legal owner of a bond or other evidence of indebtedness issued by a political subdivision or a nonprofit corporation.

(b) "Borrower" means a political subdivision or nonprofit corporation which has secured or intends to secure a loan for the construction of a health facility.

(c) "Construction, improvement, or expansion" or "construction, improvement, and expansion" includes construction of new buildings, expansion, modernization, renovation, remodeling and alteration of existing buildings, acquisition of existing buildings or health facilities, and initial or additional equipping of any of these buildings.

In connection therewith, "construction, improvement, or expansion" or "construction, improvement, and expansion" includes the cost of construction or acquisition of all structures, including parking facilities, real or personal property, rights, rights-of-way, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which the buildings or structures may be moved, the cost of all machinery and

equipment, financing charges, interest (prior to, during and for a period after completion of the construction), provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing or incident to the construction; or the financing of the construction or acquisition.

(d) "Council" means the Advisory Health Council.

(e) "Debenture" means any form of written evidence of indebtedness issued by the State Treasurer pursuant to this chapter, as authorized by Section 4 of Article XVI of the California Constitution.

(f) "Fund" means the Health Facility Construction Loan Insurance Fund.

(g) "Health facility" means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including but not limited to public health centers, community mental health centers, facilities for the developmentally disabled, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to developmentally disabled persons, facilities for the treatment of chemical dependency, including a community care facility, licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2, a clinic, as defined pursuant to Chapter 1 (commencing with Section 1200) of Division 2, an alcoholism recovery facility, defined pursuant to Section 11834.11, and a structure located adjacent or attached to another type of health facility and which is used for storage of materials used in the treatment of chemical dependency, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses' home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. "Health facility" also means an adult day health center and a multilevel facility. Except for facilities for the developmentally disabled, facilities for the treatment of chemical dependency, or a multilevel facility, or as otherwise provided in this subdivision, "health facility" does not include any institution furnishing primarily domiciliary care.

"Health facility" also means accredited nonprofit work activity programs as defined in subdivision (e) of Section 19352 and Section 19355 of the Welfare and Institutions Code, and nonprofit community care facilities as defined in Section 1502, excluding foster family homes, foster family agencies, adoption agencies, and residential care facilities for the elderly.

Unless the context dictates otherwise, "health facility" includes a

political subdivision of the state or nonprofit corporation which operates a facility included within the definition set forth in this subdivision.

(h) "Office" means the Office of Statewide Health Planning and Development.

(i) "Lender" means the provider of a loan and its successors and assigns.

(j) "Loan" means money or credit advanced for the costs of construction or expansion of the health facility, and includes both initial loans and loans secured upon refinancing and may include both interim, or short-term loans, and long-term loans. A duly authorized bond or bond issue, or an installment sale agreement, may constitute a "loan."

(k) "Maturity date" means the date on which the loan indebtedness would be extinguished if paid in accordance with periodic payments provided for by the terms of the loan.

(*l*) "Mortgage" means a first mortgage on real estate. "Mortgage" includes a first deed of trust.

(m) "Mortgagee" includes a lender whose loan is secured by a mortgage. "Mortgagee" includes a beneficiary of a deed of trust.

(n) "Mortgagor" includes a borrower, a loan to whom is secured by a mortgage, and the trustor of a deed of trust.

(o) "Nonprofit corporation" means any corporation formed under or subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or its equivalent under the laws of the state of incorporation, organized for the purpose of owning and operating a health facility.

(p) "Political subdivision" means any city, county, city and county, joint powers entity, local hospital district, or the California Health Facilities Authority.

(q) "Project property" means the real property upon which the health facility is, or is to be, constructed, improved, or expanded, and also means the health facility and the initial equipment in such health facility.

(r) "Public health facility" means any health facility which is or will be constructed for and operated and maintained by any city, county, city and county, or local hospital district.

(s) "Adult day health center" means a facility defined under subdivision (b) of Section 1570.7, which provides adult day health care, as defined under subdivision (a) of Section 1570.7.

(t) "Multilevel facility" means an institutional arrangement where a residential facility for the elderly is operated as a part of, or in conjunction with, an intermediate care facility, a skilled nursing facility, or a general acute care hospital. "Elderly," for the purposes of this subdivision, means a person 62 years of age or older.

SEC. 3. Section 2 of this bill incorporates amendments to Section 436.2 of the Health and Safety Code proposed by both this bill and AB 1836. It shall only become operative if (1) both bills are enacted

and become effective on January 1, 1990, (2) each bill amends Section 436.2 of the Health and Safety Code, and (3) this bill is enacted after AB 1836, in which case Section 1 of this bill shall not become operative.

CHAPTER 1374

An act to amend Section 13965 of the Government Code, relating to victims of crime.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary

loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000).

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit of twenty-three thousand dollars ($23,000).

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related

expenses, including counseling expenses, incurred by a victim for which restitution is requested pursuant to this section. For mental health and counseling services provided to victims of crime, rates shall not exceed the statewide average.

To assure service limitations which are uniform and appropriate to the levels of mental health treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(j) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

SEC. 2. Section 13965 of the Government Code is amended to read:

13965 (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of services, including, but not limited to, a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program

and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000).

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limit of twenty-three thousand dollars ($23,000).

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant as follows:

(1) Attorney's fees may not exceed 10 percent of the award or five hundred dollars ($500), whichever is less.

(2) In addition to any amount awarded under paragraph (1) of this subdivision, after the successful appeal of an adverse board decision pursuant to subdivision (c) of Section 13969.1, a court may award reasonable attorney's fees not the exceed one thousand dollars ($1,000).

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under subdivision (d) of this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which

are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, incurred by a victim for which restitution is requested pursuant to this section. For mental health and counseling services provided to victims of crime, rates shall not exceed the statewide average.

To assure service limitations which are uniform and appropriate to the levels of mental health treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(j) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

SEC. 3. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal

to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limits provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant, but not to exceed 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less.

(e) No attorney shall charge, demand, receive, or collect any

amount for services rendered in connection with any proceedings under this article except as awarded under this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault which occurred after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, incurred by a victim for which restitution is requested pursuant to this section. For mental health and counseling services provided to victims of crime, rates shall not exceed the statewide average.

To assure service limitations which are uniform and appropriate to the levels of mental health treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the

amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

SEC. 4. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim. The board may take any or all of the following actions:

(1) Authorize a direct cash payment to a provider of services, including, but not limited to, a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to the victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the victim.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages or support directly resulting from the injury.

(3) Authorize cash payments to or on behalf of the victim for job

retraining or similar employment-oriented rehabilitative services.

(4) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims.

(5) The total award to or on behalf of the victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to need, subject to the maximum limits provided in this section.

(d) The board may also authorize payment of attorney's fees representing the reasonable value of legal services rendered to the applicant as follows:

(1) Attorney's fees may not exceed 10 percent of the award or five hundred dollars ($500), whichever is less.

(2) In addition to any amount awarded under paragraph (1) of this subdivision, after the successful appeal of an adverse board decision pursuant to subdivision (c) of Section 13969.1, a court may award reasonable attorney's fees not to exceed one thousand dollars ($1,000).

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under subdivision (d) of this section.

(f) The maximum cash payments authorized in subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available, and may be further increased pursuant to subdivision (i).

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made.

The payments authorized by this subdivision shall not in the aggregate of all payments made by the board to the victim of the crime exceed twenty-three thousand dollars ($23,000), unless federal funds are available, in which case the aggregate maximum award may be increased to forty-six thousand dollars ($46,000).

(i) Notwithstanding any conflicting provision of this chapter, the board may, at its discretion, make additional cash payments not to exceed ten thousand dollars ($10,000) over any maximum payment amount specified in this section, for pecuniary losses as defined in subdivision (d) of Section 13960 or for services provided pursuant to this section, subject to any restrictions that apply under subdivision (a), to or on behalf of a victim of a crime involving sexual assault which occurred after January 1, 1980, who has made more than two appearances in open court, or hearings, in criminal actions involving the defendant, over an extended period of time.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, incurred by a victim for which restitution is requested pursuant to this section. For mental health and counseling services provided to victims of crime, rates shall not exceed the statewide average.

To assure service limitations which are uniform and appropriate to the levels of mental health treatment required by the victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 13965 of the Government Code proposed by both this bill and AB 245. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 13965 of the Government Code, (3) SB 395 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 245, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 13965 of the Government Code proposed by both this bill and SB 395. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 13965 of the Government Code, (3) AB 245 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 395 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 13965 of the Government Code proposed by this bill, AB 245, and SB 395. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 13965 of the Government Code, and (3) this bill is enacted after AB 245 and SB 395, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 1375

An act to add Sections 6002.10, 6002.15, 6002.20, 6002.25, 6002.30, 6002.35, and 6002.40 to the Welfare and Institutions Code, relating to mental health.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. It is the intent of the Legislature that all of the following elements be incorporated into an admission review procedure for minors 14 years of age and over, and under 18 years of age in private acute psychiatric facilities:

(a) The independent clinical review shall be conducted by disinterested parties with no conflict of interest with the facility.

(b) The review procedure shall protect a minor's right to assistance from public or private advocacy sources.

(c) The review procedure shall be completed within three to 15 days following admission.

(d) The review shall include consideration of the minor's mental condition, and whether the proposed placement represents the least restrictive, most appropriate available setting in which to treat the minor.

(e) The review procedure shall include a procedure for the monitoring, review, and evaluation of the review procedure for compliance with the requirements of this act.

SEC. 2. Section 6002.10 is added to the Welfare and Institutions Code, to read:

6002.10. Any facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, to

provide inpatient psychiatric treatment, excluding state hospitals, and county hospitals, shall establish admission procedures for minors who meet the following criteria:

(a) The minor is 14 years of age and over, and is under 18 years of age.

(b) The minor is not legally emancipated.

(c) The minor is not detained under Sections 5585.50 and 5585.53.

(d) The minor is not voluntarily committed pursuant to Section 6552.

(e) The minor has not been declared a dependent of the juvenile court pursuant to Section 300 or a ward of the court pursuant to Section 602. The minor's admitting diagnosis or condition is either of the following:

(1) A mental disorder only. Although resistance to treatment may be a product of a mental disorder, the resistance shall not, in itself, imply the presence of a mental disorder or constitute evidence that the minor meets the admission criteria. A minor shall not be considered mentally disordered solely for exhibiting behaviors specified under Sections 601 and 602.

(2) A mental disorder and a substance abuse disorder.

SEC. 2.5. Section 6002.15 is added to the Welfare and Institutions Code, to read:

6002.15. (a) Prior to accepting the written authorization for treatment, the facility shall assure that a representative of the facility has given a full explanation of the treatment philosophy of the facility, including, where applicable, the use of seclusion and restraint, the use of medication, and the degree of involvement of family members in the minor's treatment to the parent, guardian or other person entitled to the minor's custody. This explanation shall be given orally and in writing, and shall be documented in the minor's treatment record upon completion.

(b) As part of the admission process, the professional person responsible for the minor's admission shall affirm in writing that the minor meets the admission criteria as specified above.

(c) Upon admission, a facility specified in Section 6002.10 shall do all of the following:

(1) Inform the minor in writing of the availability of an independent clinical review of his or her further inpatient treatment. The notice shall be witnessed and signed by an appropriate representative of the facility.

(2) Within one working day, notify the patients' rights advocate, as defined in Article 2 (commencing with Section 5540) of Chapter 5.2, regarding the admission of the minor.

(3) Provide all minors with a booklet promulgated by the State Department of Mental Health outlining the specific rights of minors in mental health facilities. The booklet shall include the phone number of the local advocate and the hours that he or she may be reached.

SEC. 3. Section 6002.20 is added to the Welfare and Institutions

Code, to read:

6002.20. (a) If the minor requests an independent clinical review of his or her continued inpatient treatment, the patients' rights advocate shall be notified of the request, as soon as practical, but no later than one working day. The role of the advocate shall be to provide information and assistance to the minor relating to the minor's right to obtain an independent clinical review to determine the appropriateness of placement within the facility. The advocate shall conduct his or her activities in a manner least disruptive to patient care in the facility. Nothing in this section shall be construed to limit, or expand, rights and responsibilities the advocate has pursuant to other provisions of law.

(b) An independent review may be requested up to 10 days after admission. At any time the minor may rescind his or her request for a review.

SEC. 4. Section 6002.25 is added to the Welfare and Institutions Code, to read:

6002.25. The independent clinical review shall be conducted by a licensed psychiatrist with training and experience in treating psychiatric adolescent patients, who is a neutral party to the review, having no direct financial relationship with the treating clinician, nor a personal or financial relationship with the patient, or his or her parents or guardian. Nothing in this section shall prevent a psychiatrist affiliated with a health maintenance organization, as defined in subdivision (b) of Section 1373.10 of the Health and Safety Code, from providing the independent clinical review where the admitting, treating, and reviewing psychiatrists are affiliated with a health maintenance organization that predominantly serves members of a prepaid health care service plan. The independent clinical reviewer shall be assigned, on a rotating basis, from a list prepared by the facility, and submitted to the county mental health director prior to March 1, 1990, and annually thereafter, or more frequently when necessary. The county mental health director shall, on an annual basis, or at the request of the facility, review the facility's list of independent clinical reviewers. The county mental health director shall approve or disapprove the list of reviewers within 30 days of submission. If there is no response from the county mental health director, the facility's list shall be deemed approved. If the county mental health director disapproves one or more of the persons on the list of reviewers, the county mental health director shall notify the facility in writing of the reasons for the disapproval. The county mental health director, in consultation with the facility, may develop a list of one or more additional reviewers within 30 days. The final list shall be mutually agreeable to the county mental health director and the facility. Sections 6002.10 to 6002.40, inclusive, shall not be construed to prohibit the treatment of minors prior to the existence of an approved list of independent clinical reviewers. The independent clinical reviewer may be an active member of the medical staff of the facility who has no direct financial relationship,

including, but not limited to, an employment or other contract arrangement with the facility except for compensation received for the service of providing clinical reviews.

SEC. 5. Section 6002.30 is added to the Welfare and Institutions Code, to read:

6002.30. (a) All reasonably available clinical information which is relevant to establishing whether the minor meets the admission criteria pursuant to subdivision (d) of Section 6002.35 shall be considered by the psychiatrist conducting the review. In considering the information presented, the psychiatrist conducting the review shall privately interview the minor, and shall consult the treating clinician to review alternative treatment options which may be suitable for the minor's mental disorder.

(b) If the minor has received medication while an inpatient, the person conducting the review shall be informed of that fact and of the probable effects of the medication. The person presenting the clinical information in favor of inpatient treatment shall also inform the psychiatrist conducting the review of the proposed treatment plan for the minor, and, if known, whether the minor has had any previous independent clinical review at any facility, and the results of that service.

(c) The standard of review shall be whether the minor continues to have a mental disorder, whether further inpatient treatment is reasonably likely to be beneficial to the minor's mental disorder, or whether the placement in the facility represents the least restrictive, most appropriate available setting, within the constraints of reasonably available services, facilities, resources, and financial support, in which to treat the minor.

(d) The review shall take place within five days of the request.

(e) At the review, the minor shall have the right to be present, to be assisted by the advocate, and to question persons recommending inpatient treatment. If the minor is unwilling to attend, the review shall be held in his or her absence with the advocate representing the minor.

(f) The location of the independent clinical review shall be compatible with, and least disruptive of, the treatment being provided to the minor. Independent clinical reviews shall be conducted at the facility where the minor is treated. The review shall be situated in a location which ensures privacy.

(g) The independent clinical review shall be held in an informal setting so as to minimize the anxiety of both parents and minors and promote cooperation and communication among all interested parties. All parties shall make a reasonable effort to speak in terms the minor can understand and shall explain any terminology with which he or she may not be familiar.

(h) The review may be closed to anyone other than the minor, his or her parents or legal guardian, a representative of the facility, the minor's advocate, the psychiatrist conducting the review and the person presenting information in favor of, or opposition to, the

inpatient treatment. The person conducting the review shall have discretion to limit the number of participants and shall keep participants to the minimum time necessary to relate the needed information.

(i) No party shall have legal representation in the review process.

(j) If any of the parties to the independent clinical review do not comprehend the language used at the independent clinical review, it shall be the responsibility of the psychiatrist conducting the independent clinical review to retain an interpreter.

SEC. 6. Section 6002.35 is added to the Welfare and Institutions Code, to read:

6002.35. (a) It shall be the responsibility of the psychiatrist conducting the independent clinical review to keep a record of the proceeding.

(b) After considering all the clinical information, the psychiatrist conducting the review shall render a binding decision. If he or she determines that further inpatient treatment is reasonably likely to be beneficial to the minor's disorder and placement in the facility represents the least restrictive, most appropriate available setting in which to treat the minor, the minor's inpatient treatment shall be authorized.

(c) If the psychiatrist conducting the review determines that the admission criteria have been met, this determination shall terminate when the minor is discharged from the facility.

(d) If the psychiatrist conducting the clinical review determines that further inpatient treatment in the facility is not reasonably likely to be beneficial to the minor's mental disorder or does not represent the least restrictive, most appropriate available setting in which to treat the minor, the minor shall be released from the facility to a custodial parent or guardian on the same day the determination was made. Except as provided in Section 43.92 of the Civil Code, upon the minor's release, neither the attending psychiatrist, any licensed health professional providing treatment to the minor in the facility, the psychiatrist who releases the minor pursuant to this section, nor the facility in which the minor was admitted or treated shall be civilly or criminally liable for any conduct of the released minor, a parent, legal guardian, or other persons entitled to custody of the minor.

SEC. 6.5. Section 6002.40 is added to the Welfare and Institutions Code, to read:

6002.40. (a) For any insurance contracts entered into after January 1, 1990, where any private insurer, certified medical plan, or private health service plan is liable to pay or reimburse a professional provider or institutional provider for the costs of medically necessary mental health services provided to the patient, the costs of the clinical review required by Sections 6002.10 to 6002.40, inclusive, including, but not limited to, the costs of the interpreter, if any, and the costs of the patients' rights advocate, shall be borne by the insurer, certified medical plan, or the health service plan. Payments to providers for the costs of the independent clinical review shall be

made promptly.

For Medi-Cal eligible patients placed in these private facilities, the costs of the clinical review required by Sections 6002.10 to 6002.40, inclusive, including the costs of the patients rights advocate, shall be borne by the county.

(b) The Legislature intends that Sections 6002.10 to 6002.40, inclusive, affect only the rights of minors confined in private mental health facilities on the consent of their parents or guardians, where the costs of treatment are paid or reimbursed by a private insurer or private health service plan.

(c) Mental health facilities shall summarize on an annual basis, information including, but not limited to, the number of minors admitted by diagnosis, length of stay, and source of payment, the number of requests for an independent clinical review by diagnosis, source of payment, and outcome of the independent clinical review and submit this information to the State Department of Mental Health. This annual summary shall be made available by the facility to the State Department of Health Services which shall monitor compliance of this section during an inspection of the facility pursuant to Sections 1278 and 1279 of the Health and Safety Code.

(d) The State Department of Mental Health, in consultation with appropriate organizations, shall develop nonmandatory guidelines for treatment of mental disorders to be utilized pursuant to this act by January 1, 1991.

(e) The State Department of Mental Health shall report to the Legislature by January 1, 1991, and annually thereafter regarding the implementation of Sections 6002 10 to 6002.40, inclusive

SEC. 7. It is the intent of the Legislature that this act shall not preclude the right to review of inpatient treatment through the exercise of other legal remedies available to minors, including, but not limited to, a writ of habeas corpus.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1376

An act to amend Section 16119 of, and to add, repeal, and add Section 16120.1 to, the Welfare and Institutions Code, relating to special needs children.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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. At that time, the department or the licensed adoption agency shall also provide the prospective adoptive family with information, in writing, on the availability of reimbursement for the nonrecurring expenses incurred in the adoption of the special needs child.

The county responsible for providing foster care for a child shall provide financial aid to the adoptive family in an amount determined pursuant to Sections 16120 and 16120.1.

SEC. 2. Section 16120.1 is added to the Welfare and Institutions Code, to read:

16120.1. Upon the authorization of the licensed adoption agency or, where appropriate, the department, the county responsible for providing adoption assistance program payments shall directly reimburse eligible individuals for reasonable nonrecurring expenses, as defined by the department, incurred as a result of the adoption of a special needs child. The state shall provide payment to the county for the reimbursement. Reimbursements shall conform to the eligibility criteria and claiming procedures established by the department and shall be subject to the following conditions:

(a) The amount of the payment shall be determined through agreement between the adopting parent or parents and the adoption agency. The agreement shall indicate the nature and the amount of the nonrecurring expenses to be paid. Payments shall be limited to an amount not to exceed four hundred dollars ($400) for each special needs placement.

(b) There shall be no income eligibility requirement for adoptive

parents in determining whether payments for nonrecurring expenses shall be made.

(c) Reimbursement for nonrecurring expenses shall be limited to costs incurred by or on behalf of adoptive parents which are not reimbursed from other sources. No payments shall be made under this section if the federal program for reimbursement of nonrecurring expenses for the adoption of special needs children pursuant to Section 673 of Title 42 of the United States Code is terminated.

(d) Reimbursement for nonrecurring expenses shall be in addition to any adoption expenses paid pursuant to Section 16121 and shall not be included in the computation of maximum benefits for which the adoptive family is eligible pursuant to Section 16121.

(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. 2.5. Section 16120.1 is added to the Welfare and Institutions Code, to read:

16120.1. Upon the authorization of the licensed adoption agency or, where appropriate, the department, the county responsible for providing adoption assistance program payments shall directly reimburse eligible individuals for reasonable nonrecurring expenses, as defined by the department, incurred as a result of the adoption of a special needs child. The state shall provide payment to the county for the reimbursement. Reimbursements shall conform to the eligibility criteria and claiming procedures established by the department and shall be subject to the following conditions:

(a) There shall be no income eligibility requirement for adoptive parents in determining whether payments for nonrecurring expenses shall be made.

(b) Reimbursement for nonrecurring expenses shall be limited to costs incurred by or on behalf of adoptive parents which are not reimbursed from other sources. No payments shall be made under this section if the federal program for reimbursement of nonrecurring expenses for the adoption of special needs children pursuant to Section 673 of Title 42 of the United States Code is terminated.

(c) Reimbursement for nonrecurring expenses shall be in addition to any adoption expenses paid pursuant to Section 16121 and shall not be included in the computation of maximum benefits for which the adoptive family is eligible pursuant to Section 16121.

(d) This section shall become operative on January 1, 1992.

SEC. 3. This act applies to all eligible claims for nonrecurring adoption expenses incurred on or after January 1, 1987.

SEC. 4. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, regulations adopted by the State Department of Social Services to implement the provisions of this act shall not be subject to the review and approval of the Office of Administrative Law. The regulations

shall not remain in effect more than 120 days unless the agency complies with subdivision (e) of Section 11346.1 of the Government Code.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1377

An act to amend Section 69510.6 of the Government Code, and to amend Section 20134 of the Public Contract Code, relating to court facilities.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 69510.6 of the Government Code is amended 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 at Crestmoor High School in San Bruno, California.

SEC. 2. Section 20134 of the Public Contract Code is amended to read:

20134. (a) In cases of great emergency, including, but not limited to, states of emergency described in Section 8558 of the Government Code, when repair or replacements are necessary to permit the continued conduct of county operations or services, or to avoid danger to life or property, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or giving notice for bids to let contract. The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of

workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may contract for the construction or expansion of the facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the

Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Chapter 5 (commencing with Section 5100) of Part 1 of Division 2 of the Public Contract Code for work performed pursuant to subdivision (a), (b), or (c).

(f) In a county of the third class in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may contract for the construction or expansion of court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected. This subdivision shall remain in effect until December 31, 1994.

SEC. 2.5. Section 20134 of the Public Contract Code is amended to read:

20134. (a) In cases of great emergency, including, but not limited to, states of emergency described in Section 8558 of the Government Code, when repair or replacements are necessary to permit the continued conduct of county operations or services, or to avoid danger to life or property, the board of supervisors, by majority

consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or giving notice for bids to let contract. The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may contract for the construction or expansion of the facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered

or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Chapter 5 (commencing with Section 5100) of Part 1 of Division 2 of the Public Contract Code for work performed pursuant to subdivision (a), (b), or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not

select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

(g) In a county of the third class in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may contract for the construction or expansion of court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected. This subdivision shall remain in effect until December 31, 1994.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 20134 of the Public Contract Code proposed by both this bill and SB 236. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 20134 of the Public Contract Code, and (3) this bill is enacted after SB 236, in which case Section 2 of this bill shall not become operative.

CHAPTER 1378

An act to amend Sections 136.2 and 139 of, and to add Section 1170.13 to, the Penal Code, relating to crimes.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 136.2 of the Penal Code is amended to read:

136.2. Upon a good cause belief that intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur, any court with jurisdiction over a criminal matter may issue orders including, but not limited to, the following:

(a) An order that a defendant shall not violate any provision of Section 136.1.

(b) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provisions of Section 136.1.

(c) An order that any person described in this section shall have no communication whatsoever with any specified witness or any victim, except through an attorney under such reasonable restrictions as the court may impose.

(d) An order calling for a hearing to determine if an order as described in subdivisions (a) to (c), inclusive, should be issued.

(e) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or a witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness's household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

For purposes of this subdivision, "immediate family members" include the spouse, children, or parents of the victim or witness.

(f) Any order protecting victims of violent crime from contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant.

Any person violating any order made pursuant to subdivisions (a) to (f), inclusive, may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1. However, any person so held in contempt shall be entitled to credit for any punishment imposed therein against any sentence imposed upon conviction of an offense

described in Section 136.1. Any conviction or acquittal for any substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 2. Section 139 of the Penal Code is amended to read:

139. (a) Except as provided in Sections 71 and 136.1, any person who has been convicted of any felony offense specified in Section 12021.1 who willfully and maliciously communicates to a witness to, or a victim of, the crime for which the person was convicted, a credible threat to use force or violence upon that person or that person's immediate family, shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison.

(b) Any person who is convicted of violating subdivision (a) who subsequently is convicted of making a credible threat, as defined in subdivision (c), which constitutes a threat against the life of, or a threat to cause great bodily injury to, a person described in subdivision (a), shall be sentenced to consecutive terms of imprisonment as prescribed in Section 1170.13.

(c) As used in this section, "a credible threat" is a threat made with the intent and the 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.

(d) The present incarceration of the person making the threat shall not be a bar to prosecution under this section.

(e) As used in this section, "malice," "witness," and "victim" have the meanings given in Section 136.

SEC. 3 Section 1170.13 is added to the Penal Code, to read:

SEC. 4. Section 1170.13 is added to the Penal Code, to read:

1170.13. (a) Notwithstanding the provisions of subdivision (a) of Section 1170.1 which provide for the imposition of a subordinate term for a consecutive offense of one-third of the middle term of imprisonment, if a person is convicted pursuant to subdivision (b) of Section 139, the subordinate term for each consecutive offense shall consist of 100 percent of the middle term. The total term of imprisonment imposed pursuant to this subdivision may exceed five years, but shall not exceed 15 years.

(b) Notwithstanding the provisions of subdivision (c) of Section 1170.1, whenever a person is convicted pursuant to subdivision (b) of Section 139 while the person is confined in a state prison, or is subject to reimprisonment for escape from such custody, the term of imprisonment for all those convictions which the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison. Punishment for the new offenses shall be calculated as provided in subdivision (a) of this section, except that the total term of imprisonment imposed may exceed 15 years.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local

agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1379

An act to amend Section 75090 of, to add Sections 75033.6 and 75076.1 to, and to add Article 2.5 (commencing with Section 75050) to Chapter 11 of Title 8 of, the Government Code, relating to the Judges' Retirement System, and making an appropriation therefor.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 75033.6 is added to the Government Code, to read:

75033.6. If a judge retires pursuant to Section 75033 or 75033.5 and there has been a community property benefit awarded to the judge's ex-spouse pursuant to Article 2.5 (commencing with Section 75050), the retirement allowance percentage payable to the judge shall be calculated at the rate specified in Section 75033 or 75033.5 less the percentage factor awarded to the ex-spouse. In no instance, regardless of the total number of years of credited service in the Judges' Retirement System, shall the retirement allowance percentage awarded the judge, when combined with the percentage awarded the ex-spouse, exceed the maximum amount allowable under the pertinent section under which the judge retired.

SEC. 2. Article 2.5 (commencing with Section 75050) is added to Chapter 11 of Title 8 of the Government Code, to read:

Article 2.5. Community Property

75050. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided pursuant to subdivision (c) of Section 4800.8 of the Civil Code, the court shall order that the accumulated contributions and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and nonmember,

respectively. Any service credit or accumulated contributions which are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) The court shall address the rights of the nonmember to the following:

(1) The right to a retirement allowance.

(2) The right to a refund of accumulated retirement contributions.

(3) The right to redeposit accumulated contributions which are eligible for redeposit by the member under Section 75028.5.

(4) The right to purchase service credit which is eligible for purchase by the member under Sections 75029 to 75030.5.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

(d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

75051. "Nonmember," as used in this article, means the spouse or former spouse of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.

75052. (a) The nonmember who is awarded a separate account shall have the right to a refund of accumulated retirement contributions in the separate account of the nonmember.

(b) The nonmember shall file an application on a form provided by the system to obtain the refund.

(c) The refund is effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember and addressed to the latest address for the nonmember on file in the system.

(d) The nonmember is deemed to have permanently waived all rights in the system and all rights to any future retirement benefits pertaining to the service credit, accumulated contributions, or both, when the refund becomes effective.

(e) The nonmember may not cancel a refund once the refund has become effective.

(f) The nonmember shall have no right to elect to redeposit the refunded accumulated contributions from the nonmember's account after the refund is effective, and shall have no right to redeposit under Section 75028.5, or to purchase service credit under Section 75029 or Section 75030.5.

(g) If at the time the parties separate, the member does not have the necessary minimum credited service to retire, the nonmember shall receive a refund of the accumulated contributions placed in the nonmember's account. "Minimum credited service" means at least five years of service credit under the Judges' Retirement System.

75053. (a) The nonmember who is awarded a separate account may redeposit accumulated contributions previously refunded to the member in accordance with the determination of the court required by Section 75050.

(b) The nonmember may redeposit only those accumulated contributions which were previously refunded to the member and which the court has determined to be the community property interest of the nonmember in the accumulated retirement contributions.

(c) If the nonmember elects to redeposit, he or she shall repay the accumulated contributions pursuant to Section 75028.5.

(d) An election to redeposit shall be considered an election to repay all accumulated contributions previously refunded that the nonmember is entitled to redeposit.

(e) The right of the nonmember spouse to redeposit is subject to the regulations of the Board of Administration of the Public Employees' Retirement System which administers the Judges' Retirement System.

(f) The member has no right to redeposit the share of the nonmember in the previously refunded accumulated contributions whether or not the nonmember elects to redeposit. However, any right to redeposit previously refunded accumulated contributions not explicitly awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(g) If the nonmember elected to redeposit upon retirement and has subsequently died, prior to completing the redeposit, the board shall file a claim against the estate of the decedent to recover benefit payments which exceeded those for which payment was made.

75054. (a) The nonmember shall have the right to purchase service credit pursuant to the determination of the court required by Section 75050.

(b) The nonmember may purchase only that service credit which the court, pursuant to Section 75050 has determined to be the community property interest of the nonmember spouse.

(c) If the nonmember elects to purchase service credit, he or she shall pay, prior to retirement the contributions and interest required.

(d) The nonmember shall have no right to purchase service credit after the effective date of a refund of the accumulated contributions in the separate account of the nonmember.

(e) The member has no right to purchase the community property interest of the nonmember in the service credit whether or not the nonmember elects to purchase the service credit. However, any service credit eligible for purchase that is not explicity awarded to the nonmember by the judgment or court order shall be deemed the exclusive property of the member.

(f) If the nonmember elected to purchase service credit upon retirement and has subsequently died, prior to completing the purchase, the board shall file a claim against the estate of the deceased to recover benefit payments which exceeded those for

which payment was made.

75055. A nonmember shall be retired upon his or her written application to the board if all of the following conditions are met:

(a) The nonmember has attained the age of 60.

(b) On the date of marriage dissolution or legal separation, the member has sufficient credited service and met other eligibility requirements to retire under Section 75025, 75032, 75033, or 75033.5.

(c) On the date of application, the member has attained age 60.

75056. Retirement shall be effective and the retirement allowance shall begin to accrue as of the date designated in the nonmember's application as the effective date of retirement, or the day following the date of the court order dividing the community property of the member and nonmember, if later. In no event shall the retirement become effective or the retirement allowance begin to accrue earlier than the first day of the month in which the nonmember's application is received at an office of the board or by an employee of the system designated by the board, or, if the nonmember has been incompetent to act on his or her own behalf continuously from the date of dissolution or legal separation, one year prior to the month in which an application by the guardian of his or her estate is so received. An application for retirement may only be filed by or for a nonmember who is living on the date the application is actually received by this system.

75057. For a nonmember, the retirement allowance shall be based on a percentage of the salary payable to the judge at the date of separation of the parties.

75058. A nonmember shall be entitled to a retirement allowance based on service accrued by the judge during their years of marriage and in accordance with the community property settlement. The retirement allowance percentage shall be calculated at the rate of 3.75 percent multiplied by the number of years and fractions of years of service specified in the court order, not to exceed 20 years. If the judge was credited with less than 12 years of service, the percentage of compensation payable shall be reduced by .25 percent for each year less than 12 years.

SEC. 3. Section 75076.1 is added to the Government Code, to read:

75076.1. If a community property benefit has been awarded to a judge's ex-spouse pursuant to Article 2.5 (commencing with Section 75050), the percent of the salary payable to the judge who retires under Section 75025 or 75060 shall be computed at the rate of 65 percent of the salary payable, at the time payment of the allowance falls due, to the judge holding the judicial office to which he or she was last elected or appointed, less the percentage awarded to the ex-spouse, or 75 percent of the salary payable less the percentage of the amount awarded to the ex-spouse if the judge has served at least 20 years of service at the time of his or her retirement. In no instance, regardless of the total number of years of judicial service, shall the retirement allowance percentage awarded the judge when

combined with the percentage awarded the ex-spouse exceed the maximum amount allowable under the pertinent section under which the judge retired.

SEC. 4. Section 75090 of the Government Code is amended to read:

75090. The benefits of this article are payable only to the surviving spouse of a judge who elects to come within this article. Any person who becomes a judge after August 22, 1964, may elect to come within this article within six months after becoming a judge or three months after notice is mailed to him or her by the Judges' Retirement System, except as otherwise provided in this section. Election to come within this article is made by filing written notice thereof with the Judges' Retirement System. Any election by a judge may thereafter be revoked by the judge and a reelection may be made at any time after that revocation.

Any judge who was married prior to January 1, 1990, and who had not previously elected to come within this article, shall exercise his or her election prior to April 1, 1990. A judge so electing shall pay all the contributions he or she would have made pursuant to Section 75092 had he or she been covered by this article as soon as originally eligible pursuant to this section.

SEC. 5. There is hereby appropriated from the Judges' Retirement Fund the sum of twenty-five thousand dollars ($25,000) for expenditure to implement Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code. If the cost of implementing and administering this act exceeds the amount of this appropriation, the Board of Administration of the Public Employees' Retirement System shall establish and levy a fee on the member or nonmember, or both, in an amount sufficient to cover the board's actual expenses in establishing and maintaining nonmember accounts, not to exceed four dollars ($4) per month. This fee shall be drawn from the member or nonmember accounts, or both, as determined by the courts.

SEC. 6. It is the intent of the Legislature that Sections 1, 2, 3, 5, 6, and 8 of this act apply to all judges' retirement benefits in which there is an undivided community property interest and in all dissolution of marriage or legal separation cases which are pending on the effective date of this act or in which the court has reserved jurisdiction over the benefit or not yet awarded the benefit.

SEC 7. Sections 1, 2, 3, 5, 6, and 8 of this act shall be deemed to be retroactive to June 1, 1988.

SEC. 8. Nothing in Sections 1, 2, 3, 5, 6, and 8 of this act shall be construed to create or vest in the nonmember spouse any class of entitlement or benefits that would not be available to the nonmember spouse had he or she been a member of the system for the same time and upon the same terms as the member spouse. Additionally, nothing in this act shall be construed to make the nonmember spouse a member of the Judges' Retirement System. Entitlements and benefits for which the nonmember spouse is not

eligible shall include, but not be limited to, health benefits, dental benefits, and vision care.

CHAPTER 1380

An act to amend Section 20001 of the Business and Professions Code, to add Section 3343.7 to the Civil Code, and to amend Section 31005 of the Corporations Code, relating to franchises.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 20001 of the Business and Professions Code is amended to read:

20001. As used in this chapter, "franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

(a) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and

(b) The operation of the franchisee's business pursuant to that plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(c) The franchisee is required to pay, directly or indirectly, a franchise fee.

(d) "Franchise" does not include any of the following:

(1) Any franchise governed by the Petroleum Marketing Practices Act (P.L. 95-297).

(2) Lease departments, licenses, or concessions at or with a general merchandise retail establishment where the lease department, licensee, or concessionaire is incidental and ancillary to the general commercial operation of the retail establishment. Sales of a leased department, license, or concessionaire are incidental and ancillary to the general commercial operation of the retail establishment if they amount to less than 10 percent of the establishment's sales.

(3) A nonprofit organization operated on a cooperative basis by and for independent retailers which wholesales goods and services primarily to its member retailers and in which all of the following is applicable:

(A) Control and ownership of each member is substantially equal.

(B) Membership is limited to those who will use the services furnished by the organization.

(C) Transfer of ownership is prohibited or limited.

(D) Capital investment receives no return.

(E) Substantially equal benefits pass to the members on the basis of patronage of the organization.

(F) Members are not personally liable for obligations of the organization in the absence of a direct undertaking or authorization by them.

(G) Services of the organization are furnished primarily for the use of the members.

(H) Each member and prospective member is provided with an offering circular which complies with the specifications of Section 31111 of the Corporations Code.

(I) No part of the receipts, income, or profit of the organization are paid to any profitmaking entity, except for arms-length payments for necessary goods and services and members are not required to purchase goods or services from any designated profitmaking entity.

(J) The nonprofit organization is subject to an action for rescission or damages under Section 3343.7 of the Civil Code if the organization fraudulently induced the plaintiff to join the organization.

SEC. 2. Section 3343.7 is added to the Civil Code, to read:

3343.7. An action may be brought against any nonprofit organization operated on a cooperative basis by and for independent retailers which wholesales goods and services primarily to its member retailers as described in paragraph (3) of subdivision (d) of Section 20001 of the Business and Professions Code or subdivision (c) of Section 31005 of the Corporations Code, for rescission of a membership contract entered into, or for any damages sustained, as a consequence of being fraudulently induced to join the organization. For purposes of this section, "fraudulently induced" means the misrepresentation of a material fact, or the omission of a material fact, including the failure of the organization to disclose all information required under subparagraph (H) of paragraph (3) of subdivision (d) of Section 20001 of the Business and Professions Code or paragraph (8) of subdivision (c) of Section 31005 of the Corporations Code, unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know (or if the defendant had exercised reasonable care would not have known) of the untruth or omission.

SEC. 3. Section 31005 of the Corporations Code is amended to read:

31005. (a) "Franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

(1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and

(2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and

(3) The franchisee is required to pay, directly or indirectly, a franchise fee.

(b) For the purposes of this division, the term "franchise" also means the following:

(1) Any contractual agreement between a petroleum corporation or distributor and a gasoline dealer, or between a petroleum corporation and distributor, under which the petroleum distributor or the gasoline dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the other party to the agreement, or any agreement between a petroleum corporation or distributor and a gasoline dealer, or between a petroleum corporation and distributor, under which the petroleum distributor or the gasoline dealer is granted the right to occupy premises owned, leased, or controlled by the other party to the agreement, for the purposes of engaging in the retail sale of petroleum and other products of the other party to the agreement.

(2) Any contract between a refiner and a petroleum distributor, between a refiner and a petroleum retailer, between a petroleum distributor and another petroleum distributor, or between a petroleum distributor and a petroleum retailer, under which a refiner or petroleum distributor authorizes or permits a petroleum retailer or petroleum distributor to use, in connection with the sale, consignment, or distribution of gasoline, diesel, gasohol, or aviation fuel, a trademark which is owned or controlled by such refiner or by a refiner which supplies fuel to the petroleum distributor which authorizes or permits such use. The term "franchise" as defined in this paragraph includes the following:

(A) Any contract under which a petroleum retailer or petroleum distributor is authorized or permitted to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of fuel under a trademark which is owned or controlled by such refiner or by a refiner which supplies fuel to the petroleum distributor which authorizes or permits such occupancy.

(B) Any contract pertaining to the supply of fuel which is to be sold, consigned, or distributed under a trademark owned or controlled by a refiner, or under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, fuel was sold, consigned, or distributed under a trademark owned and controlled on such date by a refiner.

(C) The unexpired portion of any franchise, as defined by the preceding provisions of this subdivision, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provision of state law which permits such transfer or assignment without regard to any provision of the franchise.

(c) For purposes of this division, the term "franchise" does not include a nonprofit organization operated on a cooperative basis by and for independent retailers which wholesales goods and services primarily to its member retailers and to which all of the following is

applicable:

(1) Control and ownership of each member is substantially equal.

(2) Membership is limited to those who will avail themselves of the services furnished by the organization.

(3) Transfer of ownership is prohibited or limited.

(4) Capital investment receives no return.

(5) Substantially equal benefits pass to the members on the basis of patronage of the organization.

(6) Members are not personally liable for obligations of the organization in the absence of a direct undertaking or authorization by them.

(7) Services of the organization are furnished primarily for the use of the members.

(8) Each member and prospective member is provided with an offering circular which complies with the specifications of Section 31111.

(9) No part of the receipts, income, or profit of the organization is paid to any profitmaking entity, except for arms-length payments for necessary goods and services, and members are not required to purchase goods or services from any designated profitmaking entity.

(d) The nonprofit organization is subject to an action for rescission or damages under Section 3343.7 of the Civil Code if the organization fraudulently induced the plaintiff to join the organization.

CHAPTER 1381

An act to amend Section 1858.35 of the Insurance Code, relating to insurance.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1858.35 of the Insurance Code is amended to read:

1858.35 On or before May 1 of each year, the commissioner shall submit a report to the Legislature and the Governor stating the number and type of complaints received under this article and the status and disposition of these complaints. The commissioner may make any recommendations for improving the efficiency and effectiveness of complaint handling under this article.

No information shall be provided under this section pertaining to a specified complaint against a specific insurer or rating organization. However, the commissioner may report that information in the aggregate.

CHAPTER 1382

An act to amend Sections 1504, 7360, 7361, and 7363 of, and to repeal Section 7362 of, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1504 of the Fish and Game Code is amended to read:

1504. (a) When income is derived directly from real property acquired and operated by the state as wildlife management areas, and regardless of whether income is derived from property acquired after October 1, 1949, the department shall pay annually to the county in which the property is located an amount equal to the county taxes levied upon the property at the time title to the property was transferred to the state. The department shall also pay the assessments levied upon the property by any irrigation, drainage, or reclamation district.

(b) Any delinquent penalties or interest applicable to any such assessments made prior to September 9, 1953, are hereby canceled and shall be waived.

(c) Payments provided by this section shall be from funds available to the department.

(d) As used in this section, the term "wildlife management area" includes waterfowl management areas, deer ranges, upland game bird management areas, and public shooting grounds.

(e) Payments under this section shall be made on or before December 10 of each year, excepting newly acquired property for which payments shall be made pursuant to subdivision (f).

(f) Payments for the purposes of this section shall be made within one year of the date title to the property was transferred to the state, or within 90 days from the date of designation as a wildlife management area, whichever occurs first, prorated for the balance of the year from the date of designation as a wildlife management area to the 30th day of June following the date of designation as a wildlife management area, and, thereafter, payments shall be made on or before December 10 of each year.

SEC. 2. Section 7360 of the Fish and Game Code is amended to read:

7360. In addition to a valid California sportfishing license and any applicable license stamp issued pursuant to Sections 7149, 7150, and 7151, a person taking striped bass shall have permanently affixed to his or her license a striped bass stamp which may be obtained from the department or an authorized agent of the department upon payment of a fee of three dollars and fifty cents ($3.50).

SEC. 3. Section 7361 of the Fish and Game Code is amended to read:

7361. (a) Fees received by the department pursuant to Section 7360 shall be allocated for the preservation and enhancement of the striped bass fishery in California.

(b) Notwithstanding Section 13004, fees received by the department pursuant to Section 7360 on and after January 1, 1990, shall be available, upon appropriation by the Legislature, for the preservation and enhancement of the striped bass fishery in California.

SEC. 4. Section 7362 of the Fish and Game Code is repealed.

SEC. 5. Section 7363 of the Fish and Game Code is amended to read.

7363. This article 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. 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1383

An act to add Chapter 6.67 (commencing with Section 25270) to Division 20 of the Health and Safety Code, and to amend Section 3106 of the Public Resources Code, relating to petroleum, and making an appropriation therefor.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Chapter 6.67 (commmencing with Section 25270) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.67. ABOVEGROUND STORAGE OF PETROLEUM

25270. The Legislature finds and declares all of the following:

(a) There are 65,000 or more aboveground tanks in the state which hold a variety of dangerous substances which may pose minor to very serious threats to the environment and the public.

(b) Aboveground storage tanks have been found to leak and spill into the ground and water, causing major contamination problems. In one event alone, in Martinez, California, during April 1988, an estimated 400,000 gallons of crude oil were spilled into sensitive marshes, Suisun Bay, and the Bay Delta Estuary, causing major damage to the ecosystem in the area.

(c) Among the causes for environmental damage resulting from aboveground tanks are leaks and spills from tanks due to advanced age, defects in design or installation, human error, and equipment failure.

(d) While there exists a statewide program for determining the amount and type of hazardous substances being stored in underground tanks, there does not exist a similar program to commence to address the problems posed by aboveground tanks.

(e) The ability to reduce the incidence and damage from hazardous spills and leaks depends upon preventive steps taken by industry and monitoring agencies. The federal government, which has traditionally monitored aboveground tank installations, is presently experiencing a severe budget and personnel shortage devoted to the function of inspecting aboveground tanks.

(f) The health of California's people, wildlife, fish, and vegetation depend upon a clean environment.

(g) It is necessary to protect the state's people and natural resources by establishing a program of inspecting aboveground petroleum storage tanks.

25270.1. This chapter shall be known and may be cited as the Aboveground Petroleum Storage Act.

25270.2. For purposes of this chapter, the following definitions apply:

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

(b) "Fund" means the Environmental Protection Trust Fund established pursuant to Section 25271.

(c) "Crude oil or its fractions" means crude petroleum or all products in liquid form derived from petroleum.

(d) "Operator" means the person responsible for the overall operation of a tank facility.

(e) "Owner" means the person who owns the tank facility or part of the tank facility.

(f) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, or association. "Person" also includes any city, county, district, the University of California, the California State University, the state, any department or agency thereof, and the United States, to the extent authorized by federal law.

(g) "Regional board" means a California regional water quality control board.

(h) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, or disposing into the environment.

(i) "Storage" or "store" means the containment, handling, or treatment of crude oil or its fractions, for any period of time, including on a temporary basis.

(j) "Storage tank" means any aboveground tank or container used for the storage of crude oil or its fractions. "Storage tank" does not include any of the following:

(1) A pressure vessel or boiler which is subject to Part 6 (commencing with Section 7620) of Division 5 of the Labor Code.

(2) A storage tank containing hazardous waste, as defined in subdivision (g) of Section 25316, if the person owning or operating the storage tank has been issued a hazardous waste facilities permit for the storage tank by the department.

(3) An aboveground oil production tank which is subject to Section 3106 of the Public Resources Code.

(k) "Tank facility" means any one, or combination of, aboveground storage tanks, including any piping which is integral to the tank, which contains crude oil or its fractions and which is used by a single business entity at a single location or site. For purposes of this chapter, a pipe is integrally related to an aboveground storage tank if the pipe is connected to the tank and meets any of the following:

(1) The pipe is within the dike or containment area.

(2) The pipe is connected to the first flange or valve after the piping exits the containment area.

(3) The pipe is connected to the first flange or valve on the exterior of the tank, if state or federal law does not require a containment area.

25270.3. (a) Except as provided in subdivision (b), a tank facility is subject to this chapter if either of the following conditions apply:

(1) The tank facility is subject to the oil pollution prevention regulations specified in Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations.

(2) (A) The tank facility has a storage capacity of 10,000 gallons or more of crude oil or its fractions.

(B) Notwithstanding subparagraph (A), a tank facility located on a farm, nursery, logging site, or construction site is not subject to the requirements of subdivision (c) of Section 25270.5 if no storage tank at the location exceeds 20,000 gallons and the cumulative storage capacity of the tank facility does not exceed 100,000 gallons.

(b) This chapter does not apply to any tank facility, or portion of a tank facility, subject to Section 3106 of the Public Resources Code.

25270.4. The board and the regional board shall administer this chapter with regard to a tank facility, or a portion of a tank facility, which is subject to Part 112 (commencing with Section 112.1) of Subchapter D of Chapter I of Title 40 of the Code of Federal Regulations, except for that portion of a tank facility associated with the production of oil, which shall be supervised by the Division of Oil and Gas of the Department of Conservation pursuant to Section 3106

of the Public Resources Code.

25270.5. (a) By January 1, 1991, the board shall adopt a schedule for the inspection of tank facilities subject to this chapter. In adopting this schedule, the board shall give special attention to those tank facilities which are near navigable waters, potable water supplies, or sensitive ecosystems, such as wetlands and marshes.

(b) Each regional board shall conduct periodic inspections of each storage tank at a tank facility in accordance with the schedule determined by the board pursuant to subdivision (a) for compliance with the spill prevention and countermeasure plan.

(c) Except as provided in subparagraph (B) of paragraph (2) of subdivision (a) of Section 25270.3, each owner or operator of a storage tank at a tank facility subject to this chapter shall, by January 1, 1991, prepare a spill prevention control and countermeasure plan prepared in accordance with the guidelines contained in Part 112 of Title 40 of the Code of Federal Regulations. Each owner or operator specified in this subdivision shall conduct periodic inspections of the storage tanks to assure compliance with Section 112.7 of Title 40 of the Code of Federal Regulations. In implementing the spill prevention control and countermeasure plan, each owner or operator specified in this subdivision shall fully comply with the latest version of the regulations contained in Part 112 of Title 40 of the Code of Federal Regulations.

(d) The owner or operator of a tank facility specified in subparagraph (B) of paragraph (2) of subdivision (a) of Section 25270.3 shall take all of the following actions:

(1) Conduct daily visual inspections of any tank storing crude oil or its fractions.

(2) Allow the regional board to conduct periodic inspections of the tank facility.

(3) Install a secondary means of containment for the entire contents of the largest tank at the tank facility, plus sufficient space for precipitation, if the regional board determines this installation is necessary for the protection of the waters of the state.

25270.6. (a) On or before July 1, 1990, and on or before July 1 of every two years thereafter, each owner or operator of a tank facility subject to this chapter shall file with the board a storage statement which shall identify the name and address of the tank facility, a contact person for the tank facility and the location, size, age, and contents of each tank that exceeds 10,000 gallons in capacity and which holds a substance containing at least 5 percent of crude oil or its fractions. A copy of a statement submitted previously pursuant to this section may be submitted in lieu of a new storage statement if no new or used storage tanks have been added to the facility or if no significant modifications have been made. For purposes of this section, a significant modification includes, but is not limited to, altering existing storage tanks or changing spill prevention or containment methods.

(b) Each storage statement submitted pursuant to subdivision (a)

shall be accompanied by a fee in accordance with the following schedule:

Total Tank Facility Storage Capacity	Per Facility Fee
10,000–100,000 gallons	$ 50
100,001–1,000,000 gallons	100
1,000,001–10,000,000 gallons	200
10,000,001–100,000,000 gallons	500
100,000,001 or more gallons	1,000

(c) The fees collected pursuant to this section shall be deposited in the fund until the total sum in the fund equals seven million five hundred thousand dollars ($7,500,000) in any one year.

If fees in excess of seven million five hundred thousand dollars ($7,500,000) are collected by the board, a pro rata share of the excess shall be returned to the owners or operators who paid the fee, or at the option of the owner or operator, credited to their account for a subsequent year. Expenses recovered pursuant to Section 25270.9, and penalties collected pursuant to Section 25270.12, shall not be available for return or credit to owners or operators pursuant to this subdivision. The board shall annually revise the sum of seven million five hundred thousand dollars ($7,500,000) to reflect the change in the cost of living in the state.

25270.7. (a) Except as provided in subdivision (d), the owner or operator of a tank facility which meets the requirements of subdivision (b) or (c) shall establish and maintain a monitoring program pursuant to subdivision (b) or (c), as applicable, which shall be approved by the regional board, to detect releases to the soil and water, including both groundwater and surface water. The owner or operator shall establish the required monitoring program within 180 days after preparing the spill prevention control and countermeasure plan required by subdivision (c) of Section 25270.5 or, in the case of tanks described in subparagraph (B) of paragraph (2) of subdivision (a) of Section 25270.3, within 180 days after the initial filing of a storage statement required by Section 25270.6. The owner or operator subject to this section shall designate a schedule for monitoring and the sample locations, which shall be approved by the regional board. The owner or operator shall make the monitoring results available to the regional board and the Department of Fish and Game.

(b) Each owner or operator of a tank facility subject to this chapter which, because of the tank location, tank size, characteristics of the petroleum being stored or the spill containment system, has the potential to impact surface waters or sensitive ecosystems, as determined by the regional board, shall do either of the following:

(1) Install and maintain a system, approved by the regional board, to detect releases into surface waters or sensitive ecosystems.

(2) If any discharge from a tank facility flows, or would reasonably

be expected to flow, to surface waters or a sensitive ecosystem, allow a drainage valve to be opened and remain open only during the presence of an individual who visually observes the discharge.

(c) Each owner or operator of a tank facility subject to this chapter which, because of the tank facility location, tank size, or characteristics of the crude oil or its fractions being stored (16 degrees API or lighter), has the potential to impact the beneficial uses of the groundwater, as determined by the regional board, and which is not required to have a groundwater monitoring program at the tank facility pursuant to any other federal, state, or local law, shall do any of the following:

(1) Install a tank facility groundwater monitoring system which will detect releases of crude oil or its fractions into the groundwater, as approved by the regional board.

(2) Install and maintain a tank foundation design which will provide for early detection of releases of crude oil or its fractions before reaching the groundwater, as approved by the regional board.

(3) Implement a tank water bottom monitoring system and maintain a schedule which includes a log or other record which will identify or indicate releases of crude oil or its fractions before reaching the groundwater, as approved by the regional board.

(4) Use other methods which will detect releases of crude oil or its fractions into or before reaching the groundwater, as approved by the regional board.

(d) Tank owners or operators shall report all positive findings from the detection systems required by subdivision (c) to the appropriate regional board within 72 hours after learning of the finding.

(e) This section does not apply to any tank whose exterior surface, including connecting piping, and the floor directly beneath the tank, can be monitored by direct viewing

25270.8. Each owner or operator of a tank facility shall immediately, upon discovery, notify the county and the city, if any, in which the tank facility is located, of occurrence of a spill or other release of one barrel (42 gallons) or more of crude oil or its fractions which is required to be reported to the Office of Emergency Services pursuant to subdivision (g) of Section 13272 of the Water Code.

25270.9. The board, the regional board, and the Department of Fish and Game may use funds appropriated pursuant to Section 25270.11 to oversee the cleanup or abatement efforts, or to cause cleanup or abatement efforts, in the event of a release from a storage tank at a tank facility.

The reasonable expenses of the board, the regional board, and the Department of Fish and Game incurred in overseeing or contracting for cleanup or abatement efforts which result from a leak or spill at a tank facility are a charge against the owner or operator of the tank facility. Expenses reimbursable to a public agency under this section are a debt of the tank facility owner or operator, and shall be collectible in the same manner as in the case of an obligation under

contract, express or implied. The expenses recovered pursuant to this section shall be deposited in the fund.

25270.10. (a) The board and the regional board shall periodically submit to the University of California, and publish in the State Contracts Register, a list or description of those areas of research needed by the state and private industry to better assess soil and water contamination by leaking storage tanks.

(b) The board may award grants on a competitive bid basis, to qualified persons to conduct research in areas determined pursuant to subdivision (a).

25270.11. (a) There is hereby established in the State Treasury the Environmental Protection Trust Fund. The money in the fund is available for expenditure by the board, upon appropriation by the Legislature, for the following purposes:

(1) Inspections of tank facilities.

(2) Training of inspectors of tank facilities.

(3) Oversight of, or causing, the cleanup or abatement of a release pursuant to Section 25270.9, including transfer to the regional board, or the Department of Fish and Game for this purpose.

(4) Awarding of research grants pursuant to Section 25270.10.

(5) To reimburse local and state agencies for reasonable costs incurred in responding to, overseeing the cleanup or abatement of, or causing cleanup or abatement efforts of, an accident or disaster involving an aboveground storage tank spill or release. Any local or state agency, except the board, which receives from the fund full reimbursement for these costs shall transfer to the board its right to recover costs from the owner or operator of the affected tank facility.

(6) To provide for the long-term rehabilitation and maintenance of affected wetlands and other natural resources affected by storage tank releases. The owner, manager, or custodian of adversely affected wetlands or other natural resources adversely affected by an aboveground storage tank spill or release may submit a claim for consideration by the board for funding to provide long-term rehabilitation and maintenance of those wetlands or other natural resources.

(7) To administer this chapter.

(b) All of the following shall be deposited in the fund:

(1) Fees collected pursuant to Section 25270.6.

(2) Expenses recovered pursuant to Section 25270.9.

(3) Penalties collected pursuant to Section 25270.12.

(4) Amounts transferred pursuant to Section 3 of the act adding this chapter.

(c) The money in the fund shall be expended only for spills or releases which occur on or after January 1, 1990, except that the portion of the money in the fund derived from Section 3 of the act which enacted this section, which is collected and due the state, may be expended in connection with expenses incurred as a result of any spill of crude oil exceeding 20,000 gallons which occurred in April, 1988, from one or more facilities located in the County of Contra

Costa or surrounding counties. Any reimbursement for costs associated with the spill, for which penalties were collected and appropriated under Section 3 of that act, shall not exceed the total penalty collected and transferred to the fund pursuant to Section 3 of that act.

(d) If a state or local agency obtains full funding for abatement or cleanup of a spill or release from a source other than the fund for a purpose authorized by this chapter, that agency is not eligible to receive money from the fund pursuant to this section. Otherwise, nothing in this bill is intended to nullify any other existing provision of law.

25270.12. (a) Any owner or operator of a tank facility who fails to file a storage report pursuant to subdivision (a) of Section 25270.6, to submit the fee required by subdivision (b) of Section 25270.6, to establish the monitoring system required by Section 25270.7, to report spills as required by subdivision (e) of Section 25270.7 or by Section 25270.8, or otherwise to comply with the requirements of this chapter is subject to a civil penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues. If the owner or operator commits a second or subsequent violation, a civil penalty of not more than ten thousand dollars ($10,000) for each day on which the violation continues may be imposed.

(b) The civil penalties provided by this section may be assessed and recovered in a civil action brought by the board, the regional board, or the Attorney General.

(c) The board, the regional board, or the Attorney General may seek to enjoin, in any court of competent jurisdiction, any person believed to be in violation of this chapter.

(d) The penalties collected pursuant to this chapter shall be deposited in the fund.

(e) The penalties specified in this section are in addition to any other penalties provided by law.

25270.13. This chapter does not preempt local storage tank ordinances, in effect as of August 16, 1989, which meet or exceed the standards prescribed by this chapter.

SEC. 2. Section 3106 of the Public Resources Code is amended to read:

3106. The supervisor shall so supervise the drilling, operation, maintenance, and abandonment of wells and oil production tanks and facilities to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil and gas deposits from infiltrating water and other causes; loss of oil, gas, or reservoir energy, and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of, detrimental substances, by reason of the drilling, operation, maintenance, or abandonment of wells and oil production tanks and facilities.

The supervisor shall also supervise the drilling, operation, maintenance, and abandonment of wells so as to permit the owners

or operators of such wells to utilize all methods and practices known to the oil industry for the purpose of increasing the ultimate recovery of underground hydrocarbons and which, in the opinion of the supervisor, are suitable for this purpose in each proposed case. In order to further the elimination of waste by increasing the recovery of underground hydrocarbons it is hereby declared as a policy of this state that the grant in an oil and gas lease or contract to a lessee or operator of the right or power, in substance, to explore for and remove all hydrocarbons from any lands in the State of California, in the absence of an express provision to the contrary contained in the lease or contract, is deemed to allow the lessee or contractor or the lessee's or contractor's successors or assigns, to do what a prudent operator using reasonable diligence would do, having in mind the best interests of the lessor, lessee and the state, in producing and removing hydrocarbons, including but not limited to the injection of air, gas, water or other fluids into the productive strata, the application of pressure heat or other means for the reduction of viscosity of the hydrocarbons, the supplying of additional motive force or creating of enlarged or new channels for the underground movement of hydrocarbons into production wells, when these methods or processes employed have been approved by the supervisor, except that nothing contained in this section imposes a legal duty upon the lessee or contractor, or the lessee's or contractor's successors or assigns, to conduct these operations.

The supervisor may require an operator to implement a monitoring program, designed to detect releases to the soil and water, including both groundwater and surface water, for aboveground oil production tanks and facilities.

In order to best meet oil and gas needs in California, the supervisor shall administer this division so as to encourage the wise development of the oil and gas resources.

SEC. 3. Notwithstanding any other provision of law, there is hereby transferred to the Environmental Protection Trust Fund, established pursuant to Section 25270.11 of the Health and Safety Code, an amount equal to one-third the penalty collected and due to the state from any spill of crude oil, exceeding 20,000 gallons, which occurred in April 1988, from one or more facilities located in the County of Contra Costa or surrounding counties. This section shall apply to any funds collected and due to the state before or after the effective date of this act.

SEC. 4. On or before January 1, 1992, the State Water Resources Control Board shall conduct a study of the storage of hazardous materials in the state, report its findings, and submit recommendations to the Legislature and the Governor, on ways to improve oversight of aboveground storage facilities. The board shall consider the extent to which storage of hazardous materials in aboveground tanks should be made subject to a state inspection program similar to that specified in Chapter 6.67 (commencing with Section 25270) of Division 20 of the Health and Safety Code, as

proposed by Section 1 of this act, or to a strengthened local enforcement program based on Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code.

SEC. 5. (a) The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the Environmental Protection Trust Fund established pursuant to Section 25271 of the Health and Safety Code to the State Water Resources Control Board to conduct the study specified in Section 4 of this act.

(b) This section shall become operative July 31, 1990.

CHAPTER 1384

An act to amend Sections 7902.7, 56375, 56384, 56386, and 56842.5 of, and to add Sections 56375.1, 56426.5, 56827.5, 56833.1, 56833.3, 56842.6, and 56852.3 to, the Government Code, relating to local agencies.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 7902.7 of the Government Code is amended to read:

7902.7. (a) The appropriations limit of a city incorporated on or after January 1, 1988, but prior to January 1, 1990, shall be determined pursuant to Sections 56842.6 and 57104 and approved by the voters at the incorporation election.

(b) The appropriations limit of a city incorporated on or after January 1, 1990, shall be determined pursuant to Section 56842.6.

(c) 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.

(d) 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. 2. 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. The number of registered voters shall be calculated as of the time of the last report of voter registration by the county clerk to the Secretary of State prior to the date the first signature was affixed to the petition. The executive officer shall notify the petitioners of the number of registered voters resulting from this calculation.

(i) To adopt written procedures for the evaluation of proposals. The commission may adopt standards for any of the factors enumerated in Section 56841. Any standards adopted by the commission shall be written.

(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 or Section 22613 of the Streets and Highways Code if it finds the application would deprive an area of a service needed to ensure the health, safety, or welfare of the residents of the area and if it finds that the waiver would not affect the ability of a city to provide any service. However, within 60 days of the inclusion of the territory within the city, the legislative body may adopt a resolution nullifying the waiver.

(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. 3. Section 56375.1 is added to the Government Code, to read:

56375.1. The commission shall not approve or conditionally approve any proposal which includes an incorporation, unless the commission finds, based on the entire record, that:

(a) The proposed incorporation is consistent with the intent of this division, including, but not limited to, the policies of Sections 56001, 56300, 56301, and 56377.

(b) It has reviewed the spheres of influence of the affected local agencies and the incorporation is consistent with those spheres of influence.

(c) It has reviewed the comprehensive fiscal analysis prepared pursuant to Section 56833.1 and the Controller's report prepared pursuant to Section 56833.3.

(d) It has reviewed the executive officer's report and recommendation prepared pursuant to Section 56833, and the testimony presented at its public hearing.

(e) The proposed city is expected to receive revenues sufficient to provide public services and facilities and a reasonable reserve during the three fiscal years following incorporation.

SEC. 4. Section 56384 of the Government Code is amended to read:

56384. (a) The commission may appoint an executive officer who shall conduct and perform the day-to-day business of the commission. If the commission does not appoint an executive officer, the county administrator, or, if there is none, the county clerk, shall act as executive officer for the commission.

(b) The commission may appoint legal counsel to advise. If the

commission does not appoint legal counsel, the county counsel, or, if there is none, the district attorney, shall act as legal counsel for the commission. If the county counsel is subject to a conflict of interest, the commission shall appoint legal counsel to advise it. The commission may recover its costs by charging fees pursuant to Sections 56383 and 56654.

SEC. 5. Section 56386 of the Government Code is amended to read:

56386. (a) The officers and employees of a city, county, or special district, including any local agency, school district, community college district, and any regional agency, or state agency or department, as may be necessary, or any other public agency shall furnish the executive officer with any records or information in their possession which may be necessary to assist the commission and the executive officer in their duties, including, but not limited to, the preparation of reports pursuant to Sections 56833 and 56833.1.

(b) Upon request by the commission or the executive officer, the county surveyor, or any other county officer, county official, or employee as the board of supervisors may designate, shall examine and report to the commission or the executive officer upon any application or other document involving any of the matters specified in subdivision (n) of Section 56375.

SEC. 6. Section 56426.5 is added to the Government Code, to read:

56426.5. (a) Beginning January 1, 1990, at the time a commission approves a proposal for an incorporation or a reorganization which includes an incorporation, the commission may determine the sphere of influence for the proposed new city. Except as provided in subdivision (b), the commission shall determine the sphere of influence for any newly incorporated city within one year of the effective date of incorporation.

(b) The commission shall determine the sphere of influence for any newly incorporated city, the proposal for which was approved by the commission before January 1, 1990, by January 1, 1991.

SEC. 7. Section 56827 5 is added to the Government Code, to read:

56827.5. Notwithstanding Section 56827, when considering a proposal for incorporation, the commission shall hold a public hearing on any proposal filed within 30 days of any other proposal in which the proposals contain any portion of the same affected territory. In addition, the commission shall not approve any proposal for incorporation which contains any territory also contained in any other proposal until a public hearing has been held on each proposal.

SEC. 8. Section 56833.1 is added to the Government Code, to read:

56833.1. For any proposal which includes an incorporation, the executive officer shall prepare, or cause to be prepared by contract, a comprehensive fiscal analysis. This analysis shall become part of the report required pursuant to Section 56833. Data used for the analysis

shall be from the most recent fiscal year for which data are available, provided that the data are not more than one fiscal year old. When data from the most recent fiscal year are unavailable, the analysis shall document the source and methodology of the data used. The analysis shall review and document each of the following:

(a) The costs to the proposed city of providing public services and facilities during the three fiscal years following incorporation.

(b) The revenues of the proposed city during the three fiscal years following incorporation.

(c) The effects on the costs and revenues of any affected local agency during the three fiscal years of incorporation.

(d) Any other information and analysis needed to make the findings required by Section 56375.1.

SEC. 9. Section 56833.3 is added to the Government Code, to read:

56833.3. (a) For any proposal which includes an incorporation, the executive officer shall, at the request of an interested party and prior to issuing his or her report and recommendation pursuant to Section 56833, request the Controller to review the comprehensive fiscal analysis prepared pursuant to Section 56833.1.

(b) Within 45 days of receiving the analysis, the Controller shall issue a report to the executive officer regarding the accuracy and reliability of the information, methodologies, and documentation used in the analysis. The executive officer shall include the results of the Controller's report into his or her own report and recommendation issued pursuant to Section 56833.

(c) Notwithstanding Sections 56378 and 56386, the Controller may charge the commission for the actual costs incurred pursuant to this section. The commission may recover these costs by charging by charging the person who requested the Controller's review.

SEC. 10. Section 56842.5 of the Government Code is amended to read:

56842.5. If a proposal includes the formation of a district, the commission shall determine the appropriations limit of the district in accordance with Section 7902.7 and Article XIII B of the California Constitution.

SEC. 11. Section 56842.6 is added to the Government Code, to read:

56842.6. (a) If a proposal includes the incorporation of a city, the commission shall determine the provisional appropriations limit of the city in accordance with Section 7902.7 and Article XIII B of the California Constitution. The commission shall determine the provisional appropriations limit of the city in the following manner:

(1) Estimate the amount of revenue anticipated to be received by the city from the proceeds of taxes for the first full year of operation.

(2) Adjust the amount determined in paragraph (1) for the estimated change in the cost of living and population in the next full year of operation and such other changes as may be required or permitted by Article XIII B of the California Constitution.

(b) The governing body of the city shall determine the proposed permanent appropriations limit of the city to be submitted to the voters in the following manner:

(1) Determine the amount of revenue actually received by the city from the proceeds of taxes for the first full year of operation.

(2) Adjust the amount determined in paragraph (1) for the estimated change in the cost of living and population in the next full year of operation and such other changes as may be required or permitted by Article XIII B of the California Constitution.

(c) The permanent appropriations limit of the city shall be set at the first municipal election which is held at least one year after the incorporation and shall not be considered to be a change in the appropriations limit of the city pursuant to Section 4 of Article XIII B of the California Constitution.

SEC. 12. Section 56852.3 is added to the Government Code, to read:

56852.3. If the commission approves a proposal which includes the incorporation of a city, the resolution making determinations shall accept or reject each of the findings and recommendations made in the executive officer's report prepared pursuant to Section 56833, and the fiscal analysis prepared pursuant to Section 56833.1. If the commission rejects a finding or recommendation, the resolution making determinations shall include findings by the commission which present the basis for any rejection.

SEC. 13. Notwithstanding Article 2 (commencing with Section 13823) of Chapter 3 of Part 3 of the Health and Safety Code, the Board of Supervisors of the County of Lassen may by resolution entered on its minutes declare the Milford Fire District duly organized under the Fire Protection District Law, if the board of supervisors finds that the petition for the formation of the proposed district has been signed by registered voters in the proposed district equal in number at least to 51 percent of all the votes cast within the proposed district for all the candidates for Governor at the last preceding general election at which a Governor was elected.

SEC. 14. With respect to the provisions of Section 13 of this act, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances applicable only to Lassen County.

Local officials and registered voters who were cooperating in the proposed formation of the Milford Fire District were not aware of the changes to the formation procedures imposed by the Fire Protection District Law of 1987. The previous law had allowed local officials to form a fire protection district without an election when at least 51 percent of the registered voters had signed the formation petitions. Current law now requires an election to form a new fire protection district. Because of strong local support for the proposed fire protection district and the severe threat of fire danger, a general law cannot be made to apply in this case.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1385

An act to add and repeal Chapter 5.3 (commencing with Section 16525) of Part 4 of Division 9 of the Welfare and Institutions Code, relating to children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

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

(a) The Legislature hereby recognizes and acknowledges that many children adjudicated dependents of the juvenile court pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code are, because of abuse, neglect, or exploitation within the family environment, unable to remain safely in their own homes.

(b) Children requiring placement in foster care are, pursuant to Section 675(5)(A) of Title 42 of the United States Code, entitled to placement in the least restrictive, most family-like setting in close proximity to the parent's home, consistent with the best interest and special needs of the child.

(c) A significant number of children adjudicated dependents of the Juvenile Court under Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code who require placement outside their own homes have been exposed before birth to alcohol or drugs or are human immunodeficiency virus (HIV) positive.

(d) Children with biological families who can provide health care services can be discharged from hospital care into home care when it has been determined that the child is medically stable. Children who have become dependents of the juvenile court may become, because of a lack of appropriate placement options, long-term boarders in hospitals or other health care institutions.

SEC. 2. (a) It is the intent of the Legislature to support expansion of existing prevention and treatment programs designed

to serve the parent and infant affected by either substance abuse or acquired immune deficiency syndrome (AIDS) which are administered by the State Department of Health Services, the State Department of Social Services, and the State Department of Alcohol and Drug Programs, and that the Secretary of the Health and Welfare Agency designate a lead agency to coordinate this effort.

(b) Further, it is the intent of the Legislature to establish a demonstration project to place children who are alcohol- or drug-exposed or HIV positive in special foster care homes, licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, with foster parents who are trained to provide specialized in-home health care to foster children.

SEC. 3. In keeping with the commitment to place children in the least restrictive, most family-like setting, and recognizing that an adequate number of foster family homes may not be available for the placement of all children who are alcohol- or drug-exposed or test HIV positive, the Legislature supports the concept of the development of transitional placements which would allow children to move from hospital settings into a more home-like environment.

SEC. 4. Chapter 5.3 (commencing with Section 16525) of Part 4 of Division 9 is added to the Welfare and Institutions Code, to read:

CHAPTER 5 3. SERVICES FOR CHILDREN WHO ARE EXPOSED TO ALCOHOL OR DRUGS OR WHO ARE HIV POSITIVE

Article 1. General

16525. The definitions in this article shall control the interpretation of this chapter, unless the context requires otherwise.

16525.1. "Department" means the State Department of Social Services.

16525.2. "Eligible child" means any child who meets the requirements of subdivision (a) or (b), and subdivision (c).

(a) Any child who has a medically diagnosed condition or symptoms resulting from, or suspected as resulting from, substance abuse by the mother which may have injured the health of the mother or the fetus or which may have interfered with the mother's normal conduct of her life.

(b) Any child who is HIV positive.

(c) Any child who meets the requirements of either subdivision (a) or (b) and who meets all of the following requirements:

(1) The child is a dependent child of the court.

(2) The child is under three years of age.

(3) The child of a resident of an area served by a demonstration project pursuant to this chapter.

16525.3. "HIV" means human immunodeficiency virus.

16525.4. "HIV positive" means a condition of being medically diagnosed as infected with HIV.

16525.5. "Specialized in-home health care" means, but is not

limited to, those services identified by the child's primary physician as appropriately administered by a foster parent, trained by health care professionals pursuant to the discharge plan of the facility releasing the child to his or her home.

Article 2. Demonstration Project Implementation

16525.10. (a) The department shall develop and implement a demonstration project which conforms to the requirements set forth in this chapter, and shall be integrated with the foster care program authorized by Article 5 (commencing with Section 11400) of Chapter 2 of Part 3, and child welfare services programs authorized by Chapter 5 (commencing with Section 16500).

(b) (1) This demonstration project shall be conducted over a three-year period in four counties, at the request of each participating county, by the county welfare departments, pursuant to procedures established by the department.

(2) To the extent funds are available, the demonstration project shall be conducted in additional counties.

(c) The department shall implement demonstration projects pursuant to this chapter in the County of Alameda, the County of Sacramento, and the County of San Diego, and with the County of Los Angeles, for the south central region and the harbor region of that county.

16525.11. Each participating county shall recruit foster families that shall be licensed as foster family homes and trained to care for children who are alcohol- or drug-exposed or test HIV positive.

16525.13. A participating county shall provide special training to recruited foster parents to care for eligible children and shall certify that the training has been provided.

16525.14. When a child is identified by a physician, medical team, county social worker, or placement source as a child who may be eligible for services under this chapter, the county shall determine if the child is eligible for placement pursuant to this chapter.

16525.15. A participating county shall select a specialized foster family home for the child within the county in which the child's eligibility is established.

16525.17. (a) Participating counties shall prepare a child welfare services case plan pursuant to regulations adopted by the department and arrange nonmedical support services, including respite care for foster parents.

(b) Each participating county shall monitor the foster home in accordance with applicable regulations governing the foster care and child welfare services programs authorized by Article 5 (commencing with Section 11400) of Part 3 and Chapter 5 (commencing with Section 16500).

16525.25. The department shall do all of the following:

(a) Develop necessary procedures and standardized programs for a specialized foster home recruitment and training project which

will establish foster care placements to care for eligible children.

(b) Coordinate sources of funding and services available to eligible children in order to maximize the social services provided to these children and avoid duplication of programs and funding.

16525.26. A participating county may contract for the provision of services under this chapter on a sole source basis.

16525.27. (a) (1) Each participating county shall submit written progress reports as required by the department.

(2) The progress report required by paragraph (1) shall include, but need not be limited to, all of the following data:

(A) An estimate of the number of children adjudicated dependents of the juvenile court under Article 6 (commencing with Section 300) of the Welfare and Institutions Code who are eligible children.

(B) The number of eligible children who are in all of the following:

(i) Hospitals or other institutional placements.

(ii) Group homes.

(iii) Small family homes before the implementation of the demonstration project.

(C) The number of eligible children who are in specialized foster care placements during and at the termination of the demonstration project.

(D) The cost of providing training to foster parents in the health care of eligible children.

(E) The cost of providing specialized care for eligible children.

(b) The department shall report to the Legislature on the effectiveness of this demonstration project by December 31, 1992.

16525.28. (a) The project established pursuant to this chapter shall be deemed to be successful if, by the end of the first year of the demonstration project, 25 percent of children adjudicated dependents of the juvenile court who require placement outside their own homes and who are alcohol- or drug-exposed or HIV positive are placed in licensed foster family homes in which the foster parents were recruited and trained pursuant to this chapter to care for, and to provide specialized in-home health care to, a child who is alcohol- or drug-exposed or HIV positive.

(b) The project shall be deemed to be successful if, by the end of the third year of the demonstration project, 50 percent of the eligible children are placed in foster homes herein described.

16525.29. Nothing in this chapter shall be construed to prevent children who are alcohol- or drug-exposed or HIV positive who have adoption as a case plan goal from receiving services under this chapter.

16525.30. (a) Notwithstanding any other provision of law, including, but not limited to, Sections 1250, 1251, 1254, 1270, 1501, 1502, 1505, 1507, 1521, 1530.6, and 11002, subdivision (c) of Section 1550, and subdivision (a) of Section 11154 of the Health and Safety Code, and Sections 2052, 2725, 2732, and 2795 of the Business and

Professions Code, subdivisions (b) and (c) shall control the placement of a child pursuant to this chapter.

(b) A county may place children who are alcohol- or drug-exposed or HIV positive in foster family homes pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code.

(c) If a county makes a placement pursuant to subdivision (b), a foster parent trained by health care professionals pursuant to the discharge plan of the facility releasing the child may provide specialized in-home health care to that foster child.

Article 3. Duration of Chapter

16525.40. 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. 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 children who are alcohol or drug exposed or who test HIV positive to enjoy the benefits of the least restrictive, most family-like setting consistent with the best interest and special needs of the child, at the earliest possible time and to prevent these children from languishing in hospitals or other health care institutions, it is necessary for this act to take effect immediately.

CHAPTER 1386

An act to amend Sections 10133.1 and 10232.4 of the Business and Professions Code, relating to real estate brokers.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), Article 6 (commencing with Section 10237), and Article 7 (commencing with Section 10240) and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any such business.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), provided, the fees and disbursements shall not be shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a personal property broker, a consumer finance lender, or a commercial finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code which is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Federal Home Loan Bank Board by its regulations, when acting under the authority of such written authorization.

(b) Persons described in paragraph (1), (2), or (3) are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars ($40,000) or less in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section

10232.4.

For the purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

SEC. 2. Section 10133.1 of the Business and Professions Code is amended to read:

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), Article 6 (commencing with Section 10237), and Article 7 (commencing with Section 10240) and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any such business.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), provided, the fees and disbursements shall not be shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a personal property broker, a consumer finance lender, or a commercial finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code which is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Federal Home Loan Bank Board by its regulations, when acting under the authority of

such written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(b) Persons described in paragraph (1), (2), or (3) are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars ($40,000) or less in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.

For purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

SEC. 3. Section 10232.4 of the Business and Professions Code is amended to read:

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of four years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to Article 6 (commencing with Section 10237) of this chapter or applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) which requires that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary, credit union, industrial bank or industrial loan company, personal property broker, commercial finance lender, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profit sharing, or welfare fund, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph A, B, C, or D which is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of

selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 60 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

SEC. 4. Section 2 of this bill incorporates amendments to Section 10133.1 of the Business and Professions Code proposed by this bill and SB 1209. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 10133.1 of the Business and Professions Code, and (3) this bill is enacted after SB 1209, in which case Section 10133.1 of the Business and Professions Code, as amended by SB 1209, shall remain operative only until the operative date of this bill, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 1387

An act to amend Section 6403 of the Revenue and Taxation Code, relating to Sales and Use Tax, to take effect immediately, tax levy.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 6403 of the Revenue and Taxation Code is amended to read:

6403. The storage, use, or other consumption in this state of property donated by any seller to any organization described in Section 170(b)(1)(A) of the Internal Revenue Code and located in California, is exempt from the use tax. A museum shall not be a qualifying donee organization under this section unless the museum is a nonprofit museum described in subdivision (c) of Section 6366.4, and uses the donated property exclusively for display purposes within a museum.

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 1388

An act to amend Section 22825.1 of the Government Code, relating to public employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989]

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

SECTION 1 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 the employment or office including an academic position with a campus of the California State University or is a survivor of that 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 this section, the employer's contribution, with respect to each state employee annuitant identified by the board who lives where there is no available, competitive health maintenance organization and a fee for service health plan is the only option, shall be an amount equal to 90 percent of the PERS Care premium for employees and annuitants enrolled for self alone plus 90 percent of the PERS Care premium required for enrollment of family members for the 1989–90 fiscal year. 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. 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 unanticipated defaults by carriers of health benefits plans for public employees may be dealt with and remedied to the extent possible by the Board of Administration of the Public Employees' Retirement System at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1389

An act to amend Sections 68202.5, 68540, 68540.5, 68541, 68542, 68543.5, and 77202 of, and to add Section 77205.3 to, the Government Code, and to amend Section 4301 of the Penal Code, relating to administration of justice, and making an appropriation therefor.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 68202.5 of the Government Code is amended to read:

68202.5. (a) The judge of a full-time justice court shall receive the same salary as a judge of the municipal court.

(b) Except as provided in subdivision (c), a judge of a part-time justice court shall receive a salary equal to the percentage of that amount which equals the proportion of a full-time workweek required to serve the court to which the judge is appointed or elected, as determined by the Judicial Council and as provided for in the Budget Act.

(c) Each judge of a part-time justice court shall receive the same annual salary as a judge of the municipal court if both of the following conditions are met:

(1) The judge has agreed to serve full time, and to make himself

or herself available to take assignments from the Chief Justice whenever the workload determined pursuant to subdivision (d) does not require the judge's services in the court to which he or she is elected or appointed.

(2) The Chief Justice has certified that the judge is acceptable for regular judicial assignment to other courts. A certification under this subdivision may be revoked at any time for cause.

(d) A judge certified under subdivision (c) for full-time service shall be assigned to courts needing assistance when not required to serve the court to which he or she is elected or appointed, as determined by rules adopted by the Judicial Council, subject to the approval of the Chief Justice. The certification of a judge who does not serve in accordance with these rules shall be terminated. After a certification is terminated, the salary of such a judge shall be that prescribed by subdivision (b).

(e) Any justice court judge appointed or elected after January 1, 1990, shall be deemed to have agreed to make himself or herself available under paragraph (1) of subdivision (c).

(f) The salaries of justice court judges shall be paid by the counties. If the county is not a trial court funding option county, the excess of the salaries payable under subdivision (c) over the salaries payable under subdivision (b) shall be reimbursed to the county from funds made available to the Judicial Council for the assignment of judges.

SEC. 1.5. Section 68202.5 of the Government Code is amended to read.

68202.5. (a) The judge of a full-time justice court shall receive the same salary as a judge of the municipal court.

(b) Except as provided in subdivision (c) and Section 71702, a judge of a part-time justice court shall receive a salary equal to the percentage of that amount which equals the proportion of a full-time workweek required to serve the court to which the judge is appointed or elected, as determined by the Judicial Council and as provided for in the Budget Act.

(c) Each judge of a part-time justice court shall receive the same annual salary as a judge of the municipal court if both of the following conditions are met:

(1) The judge has agreed to serve full time, and to make himself or herself available to take assignments from the Chief Justice whenever the workload determined pursuant to subdivision (d) does not require the judge's services in the court to which he or she is elected or appointed.

(2) The Chief Justice has certified that the judge is acceptable for regular judicial assignment to other courts. A certification under this subdivision may be revoked at any time for cause.

(d) A judge certified under subdivision (c) for full-time service shall be assigned to courts needing assistance when not required to serve the court to which he or she is elected or appointed, as determined by rules adopted by the Judicial Council, subject to the

approval of the Chief Justice. The certification of a judge who does not serve in accordance with these rules shall be terminated. After a certification is terminated, the salary of such a judge shall be that prescribed by subdivision (b).

(e) Any justice court judge appointed or elected after January 1, 1990, shall be deemed to have agreed to make himself or herself available under paragraph (1) of subdivision (c).

(f) The salaries of justice court judges shall be paid by the counties. If the county is not a trial court funding option county, the excess of the salaries payable under subdivision (c) over the salaries payable under subdivision (b) shall be reimbursed to the county from funds made available to the Judicial Council for the assignment of judges.

SEC. 2. Section 68540 of the Government Code is amended to read:

68540. (a) Whenever a judge of a superior court is assigned by the Chairperson of the Judicial Council to sit in a superior court in another county, the receiving county shall pay the state 50 percent of the judge's full salary for the time the judge served the receiving court and the state shall reimburse the lending county 10 percent of the judge's salary. If the county is an option county, as defined in Section 77004, the amounts due shall be paid and credited as provided in Section 77205.3.

(b) The state shall pay the additional compensation of a judge of a municipal or justice court, assigned to a superior court, and the receiving county shall pay the state 50 percent of a superior court judge's full salary for the time the judge served the receiving court and the state shall reimburse the lending county 10 percent of the judge's salary. If the county is an option county, as defined in Section 77004, the amounts due shall be paid and credited as provided in Section 77205.3.

SEC. 3. Section 68540.5 of the Government Code is amended to read:

68540.5. Whenever a judge of a municipal court or a judge of a justice court who receives the same annual salary as a judge of a municipal court is assigned by the Chairperson of the Judicial Council to a municipal court in another county, the receiving county shall pay the state 50 percent of a municipal court judge's full salary for the time the judge served the receiving court and the state shall reimburse the lending county 10 percent of the judge's salary. If the county is an option county, as defined in Section 77004, the amounts due shall be paid and credited as provided in Section 77205.3.

SEC. 4. Section 68541 of the Government Code is amended to read:

68541. (a) The compensation of a judge of a justice court who receives a part-time salary sitting in another justice court or a municipal court under assignment made by the Chairperson of the Judicial Council shall be paid by the state, and the receiving county shall pay the state 50 percent of the judge's full salary for the time

the judge served the receiving court. If the county is an option county, as defined by Section 77004, the amount due shall be paid as provided in Section 77205.3.

(b) If a justice court judge is assigned to another justice court, except for exchange assignments as defined by rules adopted by the Judicial Council, the salary of the office to which he or she is assigned shall, for purposes of Section 68540.7, be deemed to be equivalent to the salary paid a justice court judge certified pursuant to Section 68202.5 of the Government Code.

SEC. 5. Section 68542 of the Government Code is amended to read:

68542. The expenses for travel, board, and lodging of each judge assigned to a superior, municipal, or justice court in a county other than that in which he or she regularly sits shall be paid by the state, and the receiving county shall reimburse the state for these expenses. If the county is an option county, as defined in Section 7004, the amount due shall be paid as provided in Section 77205.3. If the judge is out of the county overnight or longer, the judge is entitled to, and the state shall pay, a per diem allowance in lieu of expenses for board and lodging in the same amounts as are payable for those purposes to justices of the Supreme Court under the rules of the State Board of Control. If the judge is not out of the county, in which he or she regularly sits, overnight, the judge shall be reimbursed by the state for his or her actual expenditures for board, and shall not be entitled to an allowance for lodging.

SEC. 6. Section 68543.5 of the Government Code is amended to read:

68543.5. Whenever a judge retired as such under the Judges' Retirement Law is assigned to sit in a court, he or she shall be compensated while so sitting at a rate equal to 92 percent of the full compensation of a judge of the court to which he or she is assigned. A retired judge of a justice court who is not under the Judges' Retirement Law and who is assigned to sit in a court shall be compensated while so sitting at the full compensation of a judge of the court to which he or she is assigned, or the compensation specified in Section 68541, whichever is greater. The compensation shall be chargeable for the period specified in Section 68547 the same as provided by law with respect to the compensation of a judge of the court to which he or she is assigned and the compensation is payable out of any appropriation for extra compensation of judges assigned by the Chairperson of the Judicial Council.

If the compensation is greater than the judge's retirement allowance, the state shall pay the judge the difference between the compensation and the retirement allowance. The state shall reimburse the Judges' Retirement Fund for the retirement allowance paid to the judge while sitting on assignment, except that if no allowance has been paid because the judge has taken deferred retirement, no reimbursement shall be paid to the Judges' Retirement System. The receiving county shall pay the state 50

percent of the judge's full salary for the time the judge served the receiving court. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3.

If the compensation would be less than his or her retirement allowance, the retirement allowance shall continue to be paid in lieu of the compensation. The state shall reimburse the Judges' Retirement Fund in the amount of the compensation which would otherwise have been paid to the judge while sitting on assignment. The receiving county shall pay the state 50 percent of the full salary of a judge of the court to which the retired judge is assigned for the time the judge serves the receiving court. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3.

If a judge retired under the Judges' Retirement Law is assigned to sit in a court, the 8-percent difference between the compensation of the retired judge while so assigned and the compensation of a judge of the court to which assigned shall be paid to the Judges' Retirement Fund.

During the period of assignment, a retired judge shall be allowed those necessary expenses for travel, board, and lodging incurred in the discharge of the assignment. When assigned to sit in the county in which he or she resides, the judge shall be allowed necessary and reasonable expenses for travel, parking, and board incurred in the discharge of the assignment. The receiving county shall reimburse the state for these expenses. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3.

Notwithstanding the above provisions pertaining to compensation, a retired judge on senior judge status shall receive compensation from the state as provided in Sections 75028 and 75028.2, and shall be allowed necessary expenses for travel, board, and lodging incurred in the discharge of the assignment as provided in this section.

The receiving county shall pay the state 50 percent of the full salary of a judge of the court to which the retired judge is assigned for the time the judge serves the receiving court. If the county is an option county, as defined in Section 77004, the amount due shall be paid as provided in Section 77205.3.

SEC. 7. Section 77202 of the Government Code is amended to read:

77202. The number of judges, court commissioners, and referees for the purpose of calculating the block grant for a county shall be as follows:

(a) The number of superior and municipal court judges for purposes of calculating the block grant shall be those authorized by Section 4 of Article VI of the California Constitution and those authorized by statute. For purposes of this chapter, a judgeship created upon the adoption of a resolution by the board of supervisors shall be deemed to be "authorized by statute" beginning with the

fiscal quarter next following the adoption of that resolution.

(b) The number of justice court judges for purposes of calculating the block grant shall be the number of positions in effect on January 1, 1988, as revised thereafter by statute. However, the block grant for a part-time justice court shall be prorated according to the percentage of the workload as compared to the workload of a full-time court, as determined by the Judicial Council.

(c) The number of subordinate judicial officers for purposes of calculating the block grant shall be the number of full-time equivalent court commissioners and referees authorized by statute, funded, filled, and reported to the Judicial Council on or before January 1, 1987, plus any such positions thereafter created on or before October 1, 1987, plus any such positions specifically authorized by statute taking effect after January 1, 1988, funded, filled, and reported to the Judicial Council.

SEC. 8. Section 77205.3 is added to the Government Code, to read:

77205.3. Amounts due the state or a county as provided in Article 2 (commencing with Section 68540) of Chapter 2 of Title 8 shall be deducted from block grants or added to block grants each quarter. The Judicial Council shall certify the net amount due to the state or county, and the Controller shall deduct or add the amount certified from the grant paid to each county. The excess of sums deducted over the sums paid shall be placed in the assigned judges account which shall serve as a revolving fund to support judicial assignment activity.

SEC. 9. Section 4301 of the Penal Code is amended to read:

4301. There shall be 6, 9, or 12 members of the committee. One-third shall be appointed by the board of supervisors; one-third by the sheriff, and one-third by the presiding or senior judge of the superior court. Of the members appointed by the judge of the superior court, one shall be a member of the State Bar.

SEC. 10. Sections 1, 2, 3, 4, 5, 6, 7, and 8, inclusive, of this act shall become operative on July 1, 1990.

SEC. 11. Section 1.5 of this bill incorporates substantially all of the amendments to Section 68202.5 of the Government Code proposed by both this bill and SB 710. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, (2) each bill amends Section 68202.5 of the Government Code, and (3) this bill is enacted after SB 710, in which case Section 68202.5 of the Government Code, as amended by SB 710, shall remain operative only until July 1, 1990, as specified in 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. 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 one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1390

An act to add Section 14613.7 to the Government Code, relating to the California State Police.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

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

(a) Violent crimes, including murder, attempted murder, kidnapping, rape, burglary, and robbery, have recently been committed in buildings which house agencies of the State of California.

(b) Great public concern currently exists about the safety of state employees and members of the public at large who necessarily use all owned and leased state facilities and grounds and state buildings as they transact public business.

(c) Currently, there is no uniform method for reporting crimes committed on state-owned and state-leased facilities, and it is essential for state agencies to report crimes immediately to the California State Police Division.

SEC. 2. Section 14613.7 is added to the Government Code, to read:

14613.7. (a) Each state agency that is currently protected by the California State Police Division, those state agencies currently being protected by contract private security companies, or those state agencies currently under contract with a local government law enforcement agency for general law enforcement services, excluding all current mutual aid agreements, shall immediately report all crimes and criminally caused property damage on state-owned or state-leased property where state employees are discharging their duties to the California State Police Division. This section shall not apply to incidents which result in the filing of Incidence Memoranda issued by the Parole Divisions of the Department of Corrections and the Department of the Youth Authority.

(b) The California State Police Division shall compile the information received pursuant to subdivision (a) and shall report to the Legislature on or before July 1 of each year on the status of criminal activity on state-owned and leased properties as specified in subdivision (a).

CHAPTER 1391

An act to add Section 15704 to, and to add Chapter 3.2 (commencing with Section 15819.30) to Part 10b of Division 3 of Title 2 of, the Government Code, relating to state building construction.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 15704 is added to the Government Code, to read:

15704. The Director of General Services may construct on a site contiguous to the first phase of the Franchise Tax Board's central office, the second phase of the central office project, parking facilities, and any other improvements, betterments, and facilities related thereto.

SEC. 2. Chapter 3.2 (commencing with Section 15819.30) is added to Part 10b of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3.2. FINANCING OF FRANCHISE TAX BOARD CENTRAL OFFICE PROJECT

15819.30. (a) The board may issue revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) to finance the construction of the second phase of the Franchise Tax Board central office project, parking facilities, and any other improvements, betterments, and facilities related thereto as described in Section 15704

(b) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of construction, the cost of working drawings, and any additional sums necessary to pay financing costs, including interest during construction, and a reasonably required reserve fund.

(c) The amount of negotiable bond anticipation notes to be sold shall not exceed the amount of revenue bonds or negotiable notes authorized by this section.

(d) Authorized construction costs shall not exceed forty million dollars ($40,000,000) based on the Lee Saylor Cost Index 433.

(e) Any augmentation of the approved project costs shall be subject to the provisions of Section 13332.11.

(f) The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313.

15819.31. The Director of General Services may execute and deliver a lease with the board for the lease of the facilities described in Section 15819.30 which are financed with the proceeds of the board's bonds, notes, or bond anticipation notes issued in accordance

with that section.

SEC. 3. The issuance of revenue bonds, negotiable notes, or negotiable bond anticipation notes or the borrowing of funds from the Pooled Money Investment Account for the cost of working drawings of the second phase of the Franchise Tax Board's central office project and related facilities which is authorized pursuant to Sections 15704, 15819.30, and 15819.31 of the Government Code shall not be undertaken by the State Public Works Board earlier than 30 days after the Director of General Services submits in writing to the Chairperson of the Joint Legislative Budget Committee, or whatever lesser time after submission the chairperson or his or her designee may determine, the preliminary plans and associated cost estimates of the proposed project and related facilities.

SEC. 4. At least 20 days prior to the award of the principal bid for construction of the facilities described in Section 15819.30 of the Government Code, the director shall notify the chairpersons of the fiscal committees of each house of the Legislature of the amount of the bid.

SEC. 5. The director shall notify the Chairperson of the Joint Legislative Budget Committee of the director's intention to execute any lease agreement authorized by Section 15819.31 of the Government Code at least 20 days prior to its execution.

CHAPTER 1392

An act to create the Honey Lake Valley Groundwater Management District, prescribing the boundaries, organization, operation, management, financing, and other powers and duties of the district.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

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

Sec. 101. This act shall be known and may be cited as the Honey Lake Valley Groundwater Basin Act.

Article 1. Creation

Sec. 102. A groundwater management district is hereby created in Lassen County to be known as the Honey Lake Valley Groundwater Management District. The district shall be governed by a board of directors as specified in Section 401, shall have the boundaries specified in Section 201, and shall exercise the powers granted by this act for purposes of groundwater management within the boundaries of the district, together with such other powers as are reasonably implied and necessary and proper to carry out the

objectives and purposes of the district. The Legislature hereby finds and declares that the preservation of the groundwater resources within the Honey Lake Valley Groundwater Basin for agricultural and municipal and industrial uses is in the public interest and that the creation of the district pursuant to this act is for the common benefit of water users within the district.

Article 2. Boundaries

Sec. 201. For the purposes of this act, the boundaries of the district include all land in California overlying the Honey Lake Valley Groundwater Basin.

Sec. 202. The initial boundaries of the district shall be established by the board of directors, after a noticed public hearing, based on studies and investigations which have been conducted by the United States Geological Survey and the Department of Water Resources in accordance with Article 5 (commencing with Section 501). The boundaries shall be depicted on a map which shall be adopted by the board of directors and thereafter recorded in the office of the county recorder.

Sec. 203. The board may adjust the district's boundaries in the same manner prescribed for establishment of the district's initial boundaries if it determines, based on additional studies and investigations by the United States Geological Survey or the Department of Water Resources, that the territory overlying the Honey Lake Valley Groundwater Basin is different than the territory theretofore shown on the recorded map of the district's boundaries.

Article 3. Definitions

Sec. 301. Unless otherwise indicated by their context, the terms defined in this article govern the interpretation of this act.

Sec. 302. "Available supply" means the quantity of groundwater which can be withdrawn annually from the groundwater basin without resulting in or aggravating conditions of overdraft, subsidence, or groundwater quality degradation. Available supply of the groundwater basin includes the average annual natural water supply, imported water, or other water which has been spread to the basin or otherwise added to the basin, and return flows to the basin attributable to these sources reaching the groundwater basin in the course of use.

Sec. 303. "Board of directors" or "board" means the board of directors of the district as more particularly described in Article 4 (commencing with Section 401).

Sec. 304. "County" means the County of Lassen.

Sec. 305. "Development project" means a project undertaken for the purpose of development of property involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for

use granted by one or more public agencies, including, but not limited to, any of the following:

(a) A tentative map or tentative parcel map required by local ordinance or the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

(b) A special or conditional use permit.

(c) A zone amendment.

Sec. 306. "District" means the Honey Lake Valley Groundwater Management District.

Sec. 307. "Export" means groundwater extracted for use outside the boundaries of the district.

Sec. 308. "Extraction" means the act of obtaining groundwater by pumping or other controlled means.

Sec. 309. "Extraction facility" means any device or method for the extraction of groundwater within the groundwater basin.

Sec. 310. "Groundwater" means water beneath the surface of the earth within the zone below the water tables in which the soil is completely saturated with water. "Groundwater" does not include any water which on January 1, 1990, is subject to appropriation under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

Sec. 311. "Groundwater basin" means the Honey Lake Valley Groundwater Basin as described in Section 201.

Sec. 312. "Metering device" means a water flow measuring device as approved by the board of directors.

Sec. 313. "Operator" means the person who operates an extraction facility. "Operator" also means the person to whom the extraction facility is assessed by the county assessor or, if not separately assessed, the person who owns the land upon which an extraction facility is located.

Sec. 314. "Overdraft" means the condition of the groundwater basin where the average annual amount of water extracted exceeds the average annual supply of water to the basin, which is determined to be recharge, plus any temporary surplus.

Sec. 315. "Person" includes any state or local governmental agency, private corporation, firm, partnership, individual, group of individuals, or, to the extent authorized by law, any federal agency.

Sec. 316. "Program" means a groundwater management program prepared by the district pursuant to this act.

Sec. 317. "Replenishment" means spreading water over a permeable area for the purpose of allowing it to percolate to the groundwater basin, or otherwise adding water to the groundwater basin which without such effort would not augment the groundwater supply.

Sec. 318. "Supplemental water" means surface water or groundwater imported from outside the watershed or watersheds of the groundwater basin and flood waters that are conserved and saved within the watershed or watersheds which would otherwise have been lost or would not have reached the groundwater basin.

Sec. 319. "Temporary surplus" means the amount of water that can be extracted from the groundwater basin, without adversely affecting the available supply of the groundwater basin, to provide storage space for natural recharge that would be lost during wet years if it could not be stored in the groundwater basin.

Sec. 320. "Water year" means the period from October 1 of one calendar year to September 30 of the following calendar year.

Sec. 321. "Well interference" means a substantial water level decline in a localized area caused by pumping from extraction facilities.

Sec. 322. "Zone of benefit" means an area, including, but not limited to, subbasins, within the district which will benefit from planning, studies, or any management program undertaken by the district in a manner different from other areas or subbasins within the district.

Article 4. General Provisions

Sec. 401. The district shall be governed by a board of directors consisting of five directors. Four directors shall be elected, at large, by eligible voters in accordance with Section 402. One director shall be a member of the board of supervisors of the county appointed by the board of supervisors, serving at the pleasure of the board of supervisors.

Sec. 402. Only eligible voters shall vote at district elections. An eligible voter is an owner of land with an extraction facility or facilities from which is capable of extracting 100 gallons per minute, exclusive of domestic use. Each eligible voter shall have one vote. At the initial district election, voting rights shall be determined by an initial groundwater extraction statement filed with the district for a specified period.

Sec. 403. The board of supervisors of the county shall appoint the initial elected members of the board of directors. The appointed members of the board of directors shall so serve until extraction facilities within the district are registered, and an initial groundwater extraction statement is filed with the district, at which time the board of supervisors shall call an election of directors. At the initial district election, the four persons receiving the highest number of votes shall be elected.

Sec. 404. For land in multiple ownership, the owners shall designate in writing to the district, prior to the deadline set by the district, the eligible voter for voting purposes. Where applicable, the owners shall designate in writing, prior to the deadline set by the district, the legal representative who shall be entitled to vote on behalf of the owners.

Sec. 405. An eligible voter may vote at any district election either in person or by a person duly appointed as his or her proxy. The proxy may be executed by the legal representative or by the single owner designated pursuant to Section 404.

Sec. 406. No appointment of a proxy shall be valid, accepted, or vote allowed thereon at any district election unless it is in writing, it is executed by the eligible voter who is entitled to cast the votes for which the proxy is given, it is notarized, and it specifies the election at which it is to be used. An appointment of a proxy shall be used only at the specified election.

An appointment of a proxy is revocable at the pleasure of the eligible voter who is entitled to cast the votes for which the proxy is given at any time before the person appointed as proxy has cast a ballot representing the votes for which the appointment was given.

Sec. 407. Except as otherwise provided in this act, the county clerk shall conduct all elections. The board may, by resolution, determine that the district shall conduct an election and designate an officer who shall perform the duties of the county clerk in conducting the election.

Sec. 408. The board may, by resolution, direct that any district election be conducted by all-mailed ballot under the procedure for mailed ballot elections set forth in the Elections Code. For a mailed ballot, eligible voters shall cast votes directly and not by proxy.

Sec. 409. (a) Except for the initial elected directors, the elected directors shall serve for terms of four years. The terms shall be concurrent with the terms of district officials elected under the Uniform District Election Law.

(b) The four directors initially elected shall determine by lot, the expiration dates for their initial terms. The term of two directors shall expire concurrently with the terms of officials subject to election at the next general election to be held under the Uniform District Election Law (Part 3 (commencing with Section 23500) of Division 14 of the Elections Code). The terms of the other two directors shall expire concurrently with the terms of officials to be elected at the subsequent general election to be held under the Uniform District Election Law.

Sec. 410. Prior to taking office, each elected director shall take the official oath and execute such bond as may be set by the board.

Sec. 411. All vacancies occurring in the office of an elected director shall be filled pursuant to Section 1780 of the Government Code.

Sec. 412. Each director shall be entitled to receive compensation in an amount set by the board and recorded in its official minutes, not to exceed fifty dollars ($50) per day for each day's attendance at meetings of the board or for each day's service rendered as a director by request of the board, not to exceed six days in any calendar month, together with actual, necessary, and reasonable expenses incurred in the performance of duties required or authorized by the board.

Sec. 413. At its first meeting and at its regular meeting in January and each year thereafter, the board shall elect a chairperson and vice chairperson from its members.

Sec. 414. No change in the date of the regular meeting of the board of directors shall be effective until notice thereof has been

published in a newspaper of general circulation within the district at least seven days prior to the effective date of the change.

Special meetings of the board may be called and conducted in the manner provided for in the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

Sec. 415. A majority of the board constitutes a quorum for the transaction of business.

Sec. 416. The vote of a majority of the directors present at any meeting attended by a quorum is necessary to take action, unless otherwise specified in this act or by law.

Sec. 417. Any extraction facility which is not capable of extracting 100 gallons per minute, exclusive of domestic use, is exempt from the requirements of this act, including charges levied and imposed pursuant to Article 8 (commencing with Section 801) and Article 9 (commencing with Section 901).

Sec. 418. This act shall not be construed to deny the county or any other district any rights or powers they already have or which they may be granted.

Sec. 419. The district may establish penalties for violations of district ordinances that are in addition to the remedies specified in this act.

Sec. 420. (a) Any ordinance adopted pursuant to this act shall become effective within 30 days of adoption. Within 10 days after its adoption, the ordinance shall be published pursuant to Section 6061 of the Government Code. From and after the effective date of adoption, any person who does not comply with the ordinance may be liable civilly for a sum not to exceed one thousand dollars ($1,000) for each day an ordinance is not complied with, in addition to any penalties established pursuant to Section 419.

(b) Without following the procedures otherwise required prior to the adoption of an ordinance pursuant to subdivision (a), the board of directors, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance. That urgency measure shall require a four-fifths vote of the board for adoption. The interim ordinance shall be of no further force and effect 45 days from its adoption. After notice pursuant to Section 6061 of the Government Code and public hearing, the board may extend the interim ordinance for 10 months and 15 days by a four-fifths vote of the board.

Sec. 421. Within 60 days after publication of any ordinance or resolution establishing or in furtherance of a groundwater management program, any interested party may file with the superior court a petition for writ of mandate for the review thereof. Failure to file an action does not preclude a party from challenging the validity of the ordinance or resolution in any judicial proceedings brought to enforce the ordinance or resolution or for any other civil remedies, including the imposition of civil penalties. The right to seek judicial review shall not be affected by the failure to seek

reconsideration from the board of directors.

Sec. 422. The board of directors may reconsider all or part of a decision on petition of any person affected by the decision. Any such petition shall be filed with the district within 15 days after adoption of the decision by the board of directors. The board of directors shall decide whether to reconsider its decision within 60 days after the petition is filed.

Sec. 423. Any county employee may serve as an ex officio employee of the district and may perform without additional compensation the same duties for the district as for the county with the consent of the board of supervisors of the county and the board.

Sec. 424. The board may employ and appoint any agents, officers, employees, and consultants as may be required, prescribe their duties, fix their salaries, and prescribe the terms and conditions of their employment.

Sec. 425. The district may enter into joint powers agreements as permitted by law for the purpose of implementing its powers and purposes as set forth in this act, including agreements with the State of Nevada and the County of Washoe.

Article 5. Studies and Investigations

Sec. 501. The district may carry on technical and other necessary investigations of all kinds and collect data necessary to carry out this act. The district shall have the right of access to all properties within the district to the extent permitted by the United States Constitution and the California Constitution.

Sec. 502. The district may cooperate and contract with federal, state, and local governmental agencies in the conduct and performance of all investigations, studies, and data collection.

Sec. 503. The district shall not implement groundwater management programs until the board of directors has received the recommendations of its engineers, consultants, and staff based on these investigations and studies.

Sec. 504. The district shall prepare annually a report on groundwater supplies and conditions in the district, including groundwater management objectives and a plan of implementation of those objectives, following a determination that groundwater management activities may be necessary.

Article 6. Registration of Groundwater Extraction

Sec. 601. The district may require extraction facilities to be registered with the district and measured with a water flow measuring device installed and calibrated by the district or, at its option, by the extraction facility operator. The district may also require any new extraction facility which is constructed, existing extraction facility which is deepened, or abandoned extraction facility which is reactivated to be registered with the district within

60 days of completion of construction, deepening, or reactivation, and measured with a water flow measuring device installed and calibrated by the district or, at its option, by the extraction facility operator.

Sec. 602. In addition to other information which the district may require, the district may require for each registered extraction facility information as to the operator of each extraction facility, the owner of the land upon which each extraction facility is located, and a general description of the equipment associated with each extraction facility and the location of each water extraction facility.

Sec. 603. It is unlawful to extract groundwater from any extraction facility required to be registered unless the extraction facility has been registered with the district and, if required, has a water flow measuring device affixed. Any person who does not comply with this section shall be liable civilly for a sum not to exceed one thousand dollars ($1,000) for each day the provisions are not complied with, in addition to any penalties established pursuant to Section 419.

Sec. 604. The district may, after notice and hearing, and based upon the findings and determinations from the hearing, require the operator of each extraction facility, until the extraction facility has been permanently abandoned, to file with the district, by a date established by the board of directors, a statement relative to groundwater extraction, including, but not limited to, the gallons per minute which is capable of being extracted from each extraction facility, the static groundwater level for each extraction facility, a general description or number locating each extraction facility, use and acreage served by the extraction facility, and the method of measuring or computing groundwater extraction. The statement shall be verified by a written declaration that it is made under penalty of perjury. The operator of an extraction facility which has been permanently abandoned shall give written notice of the abandonment to the district.

Sec. 605. When a water flow measuring device is used at an extraction facility, the record of extraction, as disclosed by the water flow measuring device, shall be presumed to be accurate and shall be used as the basis for computing the water extraction of the extraction facility in completing the groundwater extraction statement. The district may require proof of the accuracy of the water flow measuring device from the operator and may, absent adequate proof of accuracy, order the operator to have the water flow measuring device calibrated in a manner acceptable to the district. If the district has probable cause to believe that the extraction of groundwater from any extraction facility is in excess of the amount reported in groundwater extraction statements, or if no statements are filed covering an extraction facility, the district may investigate the extraction of water from each such extraction facility.

Sec. 606. The board of directors may establish reasonable methods to be used in computing the amount of water extracted by

extraction facilities.

Sec. 607. Any person who does not file a groundwater extraction statement, if required, or any person who injures, alters, removes, resets, adjusts, manipulates, obstructs, or in any manner interferes or tampers with, or procures, or causes, or directs any person to injure, alter, remove, reset, adjust, manipulate, obstruct, or in any manner interfere or tamper with, any water flow measuring device affixed to any extraction facility as required by this act so as to cause the water flow measuring device improperly or inaccurately to measure and record water extraction, or any person who, with intent to evade any provision or requirement of this act, files with the district any false or fraudulent groundwater extraction statement shall be liable civilly in a sum of not to exceed one thousand dollars ($1,000).

Article 7. Powers of the District

Sec. 701. If, upon receipt of the recommendations of its engineers, consultants, and staff, the board of directors determines that groundwater management activities may be necessary, the board of directors shall, after compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), give notice of and hold a hearing to receive evidence on the need for a program and on the form and scope of the management activities required. The requirement in this section for compliance with the California Environmental Quality Act does not, and shall not be construed to, limit compliance with that act for other discretionary actions by the board.

Sec. 702. If, upon conclusion of the hearing, and consideration of any relevant investigations, studies, or results performed pursuant to Article 5 (commencing with Section 501) and Article 6 (commencing with Section 601), the board of directors determines that management in the form proposed is necessary for the sound management of the groundwater within the groundwater basin, the district may, by ordinance, exercise any of the following powers:

(a) The district may store water in and recapture water from surface reservoirs or groundwater basins within the district.

(b) The district may conserve and reclaim water within or outside of the district and require conservation practices and measures within the district.

(c) The district, in order to improve and protect the quality of groundwater supplies or to respond to, and rectify, conditions of subsidence, may treat, inject, extract, or otherwise control water, including, but not limited to, control of extractions and drainage problems. These powers include the right to regulate, limit, or suspend extractions from extraction facilities, the construction of new extraction facilities, the enlarging of existing facilities, or the reactivation of abandoned extraction facilities.

(d) The district may regulate groundwater replenishment

programs and recapture supplemental groundwater resulting from such programs within the district as provided by this act. The district may determine the amount of groundwater basin storage space available and to allocate groundwater basin storage space within the groundwater basin.

(e) The district may commence and prosecute actions to enjoin unreasonable uses or methods of use of groundwater within the district or outside of the district to the extent those uses or methods of use affect the groundwater supply within the district.

Sec. 703. The district may impose spacing requirements on new extraction facility construction to minimize well interference.

Sec. 704. The district may, at the request of a district water user, impose reasonable operating regulations on extraction facilities to minimize well interference. The regulations may, where feasible, require the operation of extraction facilities on a rotation basis. Rotation is not feasible if it would require an overlying owner to construct a new well to irrigate the acreage being irrigated by a single existing well.

Sec. 705. (a) The district may, at the request of a water user, and after notice to all affected persons, convene a hearing to ascertain if the legal rights of the complaining water user have been infringed through well interference by the operation of other extraction facilities within the district.

(b) If, on the basis of the hearing record, the board of directors determines that the legal rights of the complaining water user have been infringed, the board of directors may make such orders as are necessary to provide the complaining water user with an adequate remedy to the well interference.

(c) The district may petition the appropriate superior court for enforcement of its order.

Sec. 706. (a) No groundwater shall be exported from the district unless the exporter has applied for and obtained a permit from the district which establishes the quantity of water which may be exported and the conditions on the export. Notwithstanding any conditions specified in the permit, exporters are subject to Section 707.

(b) The district shall not issue any permit to export water from the district unless the applicant has established that there is an available supply as defined in this act, in excess of the amount currently required for reasonable and beneficial uses within the district, and the board of directors determines that the export, if permitted, would not adversely affect the rights of groundwater users within the district. The district shall issue permits for export for such time periods and under such terms and conditions as it deems appropriate. All permits shall state that they are subject to the right of the district to reduce or suspend exports as provided for in this act.

Sec. 707. The district shall, after published notice and a hearing which discloses evidence of overdraft, or threat of overdraft, reduce or suspend extractions by exporters regardless of whether a permit

to export has been granted pursuant to this act.

Sec. 708. If the evidence produced at the hearing specified in Section 707, or in any subsequent hearing, tends to show that reduction or suspension of extraction by exporters will be insufficient to eliminate existing or threatened conditions of overdraft, the district may limit or suspend extractions by district users. Any such limitation or suspension of extraction shall be done in the manner described in Section 709.

Sec. 709. If the district limits or suspends extractions by district users in order to eliminate existing or threatened conditions of overdraft, rights to the use of the available supply of groundwater shall be allocated primarily on the basis of the number of irrigable acres overlying the basin or subbasin that a user owns or leases in proportion to the total number of irrigable acres overlying the basin or subbasin. The district may adjust any figure so arrived at up or down for any of the following factors:

(a) The number of acres actually irrigated compared to the number of acres owned or leased.

(b) Crop type.

(c) Wasteful or inefficient use.

(d) Reasonable need.

(e) Water conservation activities.

(f) Any other factors that the district reasonably feels it should consider in order to reach an equitable distribution within the entire district.

Sec. 710. If the district has imposed reductions on district users pursuant to Section 708, no person operating extraction facilities may extract groundwater from a new, enlarged, or reactivated extraction facility for use within the district until the operator has applied for and received a permit from the district.

Sec. 711. (a) The district shall grant the permit referred to in Section 710 upon determining the operator's share of the available supply from the groundwater basin or subbasin in the manner described in Section 709 and may limit the right to extract groundwater to that share. To the extent necessary, the district shall adjust the authorized extractions by other district users.

(b) The district may postpone the effective date of any increase authorized in subdivision (a) to the start of the next water year. The district may also establish a date by which any application shall be submitted in order to be effective at the start of the next water year.

Sec. 712. If any court is petitioned to adjudicate the groundwater basin or any part thereof, whether the petition is filed by the district or by any person, the court may base any judgment, ruling, or findings of fact primarily on the number of overlying irrigable acres that the parties own in proportion to the total number of overlying irrigable acres in the basin or subbasin. In order to reach an equitable distribution, the court may adjust any amounts so arrived at for any of the following factors:

(a) Historical pumpage.

(b) Wasteful or inefficient use.

(c) Reasonable need.

(d) Reduction or suspension of extractions required by the district.

(e) Water conservation activities.

(f) Any other factors that the court feels it should consider in order to reach an equitable distribution.

Sec. 713. In order to preserve and manage the groundwater resources of the district, the district may commence, maintain, intervene in, defend and compromise, and assume the costs and expenses incurred by the district in actions and proceedings now or hereafter begun involving groundwater, including, but not limited to, groundwater rights adjudication.

Article 8. Groundwater Extraction Charges

Sec. 801. (a) Groundwater extraction charges levied pursuant to this act are declared to be in furtherance of district activities to manage groundwater resources in the groundwater basin which are necessary for the health, welfare, and safety of the public. Groundwater extraction charges are charges for the groundwater management services rendered by the district and shall only be used to finance or otherwise support those services.

(b) Groundwater extraction charges may be levied for the benefit of all who rely directly upon the groundwater resources of the district. Groundwater extraction charges are authorized to be levied upon the extraction of groundwater from all groundwater extraction facilities which are not exempt from this act, except the extraction of water stored pursuant to a groundwater storage agreement or other storage commenced before the creation of the district, and except upon the use of supplemental water as an alternate source in lieu of groundwater.

Sec. 802. (a) Groundwater extraction charges may be levied for the purpose of paying the costs of initiating, carrying on, and completing any of the powers, projects, and purposes set forth in Articles 6 (commencing with Section 601) and 7 (commencing with Section 701), except that the charge shall not exceed the annual cost to the district incurred in carrying out the powers, projects, and purposes of this act. These activities shall be consistent with the rendering of groundwater management services by the district.

(b) Groundwater extraction charges shall be levied only within a zone or zones of benefit of the district which will benefit from the management activities set forth in Articles 6 (commencing with Section 601) and 7 (commencing with Section 701).

Sec. 803 (a) Before the levy of groundwater extraction charges, the board of directors shall, after notice and hearing, find and determine the activities required to prepare or implement any groundwater management program for the district and to initiate, carry on, or complete any of the other powers, projects, and purposes

set forth in Articles 6 (commencing with Section 601) and 7 (commencing with Section 701) and the sum of money necessary for the ensuing water year for those activities.

(b) The board of directors shall determine the need and desirability of levying a groundwater extraction charge for the purpose of paying the costs of initiating, carrying on, and completing any of the powers, projects, and purposes set forth in Articles 6 (commencing with Section 601) and 7 (commencing with Section 701). The board of directors shall find that the charge is necessary to finance or otherwise support the groundwater management services provided by the district, except that the charge shall not exceed the annual cost to the district incurred in carrying out the powers, projects, and purposes of this act.

Sec. 804. The groundwater extraction charge rate shall be uniform for groundwater extraction within each zone of benefit in the district.

Sec. 805. Groundwater extraction charges shall be calculated on the basis of groundwater extraction statements required to be filed pursuant to this act.

Sec. 806. The total of the groundwater extraction charges levied in any year shall not exceed an amount of money found to be necessary to pay the costs of initiating, carrying on, and completing any of the powers, projects, and purposes set forth in Articles 6 (commencing with Section 601) and 7 (commencing with Section 701).

Sec. 807. The groundwater extraction charge may, at the option of the district, be collected on the tax rolls of the county in the same manner, by the same persons, and at the same time as, together with and not separately from, county ad valorem property taxes. In lieu of this election, the district shall collect groundwater extraction charges at the same time, together with penalties and interest at the same rates, as is prescribed for the collection of county ad valorem property taxes. The amount of an unpaid groundwater extraction charge together with any penalty or interest thereon shall constitute a lien on that land as of the same time and in the same manner as does the tax lien securing ad valorem property taxes.

Article 9. Management Charges

Sec. 901. Management charges are hereby declared to be charges imposed on an operator or operators within the district for the benefit of all who rely directly upon the groundwater resources of the district.

Sec. 902. Each year the district may fix a management charge for the purpose of paying the costs of initiating, carrying on, and completing any of the powers, projects, and purposes for which the district is organized, except that the charge shall not exceed the annual cost to the district incurred in carrying out the powers, projects, and purposes of this act.

Sec. 903. Before the levy of management charges, the board of directors shall, after notice and hearing, find and determine the portions of the district to be benefited by management and planning activities, the need for management charges for the purpose of paying the costs of these activities, and the amount of the charges to be levied.

Sec. 904. The management charge shall be collected on the tax rolls of the county in the same manner, by the same persons, and at the same time as, together with and not separately from, county ad valorem property taxes.

Sec. 905. The amount of an unpaid management charge together with any penalty and interest thereon constitute a lien on that land as of the same time and in the same manner as does the tax lien securing county ad valorem property taxes.

Article 10. Zones of Benefit and Assessment Districts

Sec. 1001. The district may use 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 Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code), or the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code) for the construction of any facilities authorized to be constructed by the district under the provisions of this act.

Sec. 1002. (a) The board of directors may establish zones of benefit within the district. Resolutions of the board of directors shall describe the boundaries of the zones of benefit.

(b) The board of directors may amend zone of benefit boundaries by annexing property to or by withdrawing property from a zone, or may divide a zone into two or more zones. Resolutions of the board of directors shall describe the boundaries of the amended or divided zones.

Article 11. Development Projects

Sec. 1101. After creation of the district, any person seeking approval from a local agency having land use jurisdiction of a development project proposed to be located wholly or in part within the boundaries of the district and which proposes to extract groundwater for service of water shall, at the time of filing an application with the local agency, file with the district documents describing the proposed sources of water, the amount of water required, the amounts of groundwater previously used on the property proposed to be developed, and such other information as the district may reasonably require.

Sec. 1102. The district shall be considered a "responsible agency,"

as defined in Section 65933 of the Government Code, and shall submit the finding described in Section 1103 within the time period established by Section 65952 of the Government Code. The district shall comply with Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code. The application for the development project shall be deemed complete for purposes of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code when the information required by Section 1101 has been provided to the district and when the information required by Section 65943 of the Government Code has been provided to the local agency with land use jurisdiction.

Sec. 1103. (a) The district shall determine whether sufficient groundwater is available for the proposed use by a development project based on the projected use of groundwater by the project. The district shall find that sufficient groundwater is available for use by a development project upon demonstration to the district's satisfaction by the person seeking approval of the development project that the development project will not use more water than is found to be available pursuant to subdivision (b).

(b) In determining whether sufficient groundwater is available for a development project, the district shall take into account that groundwater is to be allocated primarily on the basis of the number of irrigable acres overlying the basin or subbasin that the development project occupies in proportion to the total number of irrigable acres overlying the basin or subbasin, but that such allocation may be adjusted up or down for any of the following factors:

(1) The total number of overlying acres actually irrigated or reasonably susceptible of irrigation compared to the total number of overlying acres in the basin.

(2) The number of overlying acres being irrigated from surface water sources.

(3) Crop types.

(4) Wasteful or inefficient use.

(5) Reasonable needs of water users within the district.

(6) Any possible reduction or suspension of exports which would allow in-district groundwater use to take place.

(7) Water conservation activities.

(8) Any other factors that the district reasonably feels it should consider in determining whether sufficient water will be available to the development project.

Sec. 1104. (a) Notwithstanding any other provision of law, no local agency having land use jurisdiction shall approve a proposed development project which proposes to use groundwater from the basin unless one of the following occurs:

(1) The district finds that sufficient groundwater is available to the development project pursuant to Section 1103.

(2) The local agency having land use jurisdiction conditions their approval on the action by the district pursuant to Section 1103.

(b) If, pursuant to paragraph (2) of subdivision (a), a local agency having land use jurisdiction conditionally approves a proposed development project, and if the district subsequently finds that sufficient groundwater is not available for the development project, the development project shall be deemed to be denied by the local agency as a matter of law without the local agency taking further action.

Sec. 1105. Nothing in this article limits the district's general powers to regulate groundwater extraction and use in development projects in the same manner as other extractions and use within the district.

Article 12. Enforcement Powers

Sec. 1201. Upon the failure of any person to comply with any of the provisions of this act, including, but not limited to, registration of extraction facilities and installation of measuring devices, filing of statements, payment of extraction charges, or payment of management charges, or upon failure of any person to comply with any ordinance duly adopted by the board of directors pursuant to this act, the district may petition the superior court of the county for a temporary restraining order or preliminary or permanent injunction prohibiting the person from operating an extraction facility or for such other injunctive relief as may be appropriate. The temporary restraining order shall be returnable to the court on or before 10 days after its issuance.

Sec. 1202. The right to proceed for injunctive relief is an additional right to those which may be provided elsewhere in this act or otherwise allowed by law. The district shall not be required to provide an undertaking or bond as a condition of a grant of injunctive relief.

Sec. 1203. In any action brought pursuant to this act in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued, or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without those allegations and without that proof.

Sec. 1204. The district may petition the superior court of the county to recover any sums due to the district pursuant to this act. The district shall make that request only after a hearing with due notice of the hearing given to all affected persons.

Sec. 1205. Remedies under this article are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

Sec. 1206. All moneys collected by the district pursuant to this act shall be placed in an account and shall be available without regard to fiscal year for expenditure by the district in carrying out its

groundwater management functions pursuant to this act.

SEC. 1300. 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 1301. The Legislature finds and declares that this act, which is applicable only to the Honey Lake Valley Groundwater Management District, is necessary because of the unique and special groundwater management problems in the area included in the district. It is, therefore, hereby declared that a general law cannot be made applicable to the district and that the enactment of this special law is necessary for the conservation, development, control, and use of that water for the public good and for the protection of life and property therein.

CHAPTER 1393

An act to amend Sections 1250, 1250.1, 1265.7, 1266, 1267.9, 1267.13, and 1267.16 of the Health and Safety Code, relating to health facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1250 of the Health and Safety Code is amended to read:

1250. As used in this chapter, "health facility" means any facility, place, or building which is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types:

(a) "General acute care hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care, including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology, pharmacy, and dietary services. A general acute care hospital may include more than one physical plant maintained and operated on

separate premises as provided in Section 1250.8. A general acute care hospital which exclusively provides acute medical rehabilitation center services, including at least physical therapy, occupational therapy, and speech therapy, may provide for the required surgical and anesthesia services through a contract with another acute care hospital. In addition, a general acute care hospital which, on July 1, 1983, provided required surgical and anesthesia services through a contract or agreement with another acute care hospital may continue to provide these surgical and anesthesia services through a contract or agreement with an acute care hospital.

(b) "Acute psychiatric hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff which provides 24-hour inpatient care for mentally disordered, incompetent, or other patients referred to in Division 5 (commencing with Section 5000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code, including the following basic services: medical, nursing, rehabilitative, pharmacy, and dietary services.

(c) "Skilled nursing facility" means a health facility which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(d) "Intermediate care facility" means a health facility which provides inpatient care to ambulatory or nonambulatory patients who have recurring need for skilled nursing supervision and need supportive care, but who do not require availability of continuous skilled nursing care.

(e) "Intermediate care facility/developmentally disabled habilitative" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, habilitation, developmental, and supportive health services to 15 or fewer developmentally disabled persons who have intermittent recurring needs for nursing services, but have been certified by a physician and surgeon as not requiring availability of continuous skilled nursing care.

(f) "Special hospital" means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical or dental staff which provides inpatient or outpatient care in dentistry or maternity.

(g) "Intermediate care facility/developmentally disabled" means a facility which provides 24-hour personal care, habilitation, developmental, and supportive health services to developmentally disabled clients whose primary need is for developmental services and who have a recurring but intermittent need for skilled nursing services.

(h) "Intermediate care facility/developmentally disabled—nursing" means a facility with a capacity of four to 15 beds which provides 24-hour personal care, developmental services, and

nursing supervision for developmentally disabled persons who have intermittent recurring needs for skilled nursing care but have been certified by a physician and surgeon as not requiring continuous skilled nursing care. The facility shall serve medically fragile persons who have developmental disabilities or demonstrate significant developmental delay that may lead to a developmental disability if not treated.

(i) (1) "Congregate living health facility" means a residential home with a capacity, except as provided in paragraph (4), of no more than six beds, which provides inpatient care, including the following basic services: medical supervision, 24-hour skilled nursing and supportive care, pharmacy, dietary, social recreational, and at least one type of service specified in paragraph (2). The primary need of congregate living health facility residents shall be for availability of skilled nursing care on a recurring, intermittent, extended, or continuous basis. This care is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.

(2) Congregate living health facilities shall provide one of the following services:

(A) Services for persons who are mentally alert, physically disabled persons, who may be ventilator dependent.

(B) Services for persons who have a diagnosis of terminal illness. Terminal illness means the individual has a life expectancy of six months or less as stated in writing by his or her attending physician and surgeon.

(C) Services for persons who are catastrophically and severely disabled. A catastrophically and severely disabled person means a person whose origin of disability was acquired through trauma or nondegenerative neurologic illness, for whom it has been determined that active rehabilitation would be beneficial and to whom these services are being provided. Services offered by a congregate living health facility to a catastrophically disabled person shall include, but not be limited to, speech, physical, and occupational therapy.

(3) A congregate living health facility license shall specify which of the types of persons described in paragraph (2) to whom a facility is licensed to provide services.

(4) (A) A facility operated by a city and county for the purposes of delivering services under this section may have a capacity of 59 beds.

(B) A congregate living health facility not operated by a city and county servicing persons who are terminally ill, which is located in a county with a population of 500,000 or more persons may have not more than 25 beds for the purpose of serving terminally ill persons.

(C) A congregate living health facility not operated by a city and county serving persons who are catastrophically and severely disabled, as defined in subparagraph (C) of paragraph (2) which is located in a county of 500,000 or more persons may have not more

than 12 beds for the purpose of serving catastrophically and severely disabled persons.

(5) A congregate living health facility shall have a noninstitutional, homelike environment.

(j) (1) "Correctional treatment center" means a health facility operated by the Department of Corrections, the Department of the Youth Authority, or a county, city, or city and county law enforcement agency which, as determined by the state department, provides outpatient health services, in addition to inpatient health services, to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a city, county, or city and county law enforcement facility which houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of security and protection. The health services provided by a correctional treatment center shall include, but are not limited to, all of the following basic services: physician and surgeon, psychiatrist, psychologist, nursing, pharmacy, dental, and dietary. A correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.

(2) Outpatient surgical care with anesthesia may be provided, if the correctional treatment center meets the same requirements as a surgical clinic licensed pursuant to Section 1204, with the exception of the requirement that patients remain less than 24 hours.

(3) Correctional treatment centers shall maintain written service agreements with general acute care hospitals to provide for those inmate physical health needs that cannot be met by the correctional treatment center.

(4) Physician and surgeon services shall be readily available in a correctional treatment center on a 24-hour basis.

(5) It is not the intent of the Legislature to have a correctional treatment center supplant the facilities at the California Medical Facility, the California Men's Colony, and the California Institution for Men which were in the process of licensure in 1987.

(6) This subdivision shall remain operative only until January 1, 1993.

SEC. 2. Section 1250.1 of the Health and Safety Code is amended to read:

1250.1. The state department shall adopt regulations which define all of the following bed classifications for health facilities:

(a) General acute care.

(b) Skilled nursing.

(c) Intermediate care-developmental disabilities.

(d) Intermediate care-other.

(e) Acute psychiatric.

(f) Specialized care, with respect to special hospitals only.

(g) Chemical dependency recovery.

(h) Intermediate care facility/developmentally disabled

habilitative.

(i) Intermediate care facility/developmentally disabled nursing.

(j) Congregate living health facility.

(k) Correctional treatment center. For correctional treatment centers that provide psychiatric and psychological services provided by county mental health agencies in local detention facilities, the State Department of Mental Health shall adopt regulations specifying acute and nonacute levels of 24-hour care. This subdivision shall remain operative only until January 1, 1993.

Except as provided in Section 1253.1, beds classified as intermediate care beds, on September 27, 1978, shall be reclassified by the state department as intermediate care-other. This reclassification shall not constitute a "project" within the meaning of Section 437.10 and shall not be subject to any requirement for a certificate of need under Part 1.5 (commencing with Section 437) of Division 1, and regulations of the state department governing intermediate care prior to such effective date shall continue to be applicable to the intermediate care-other classification unless and until amended or repealed by the state department.

Licensed inpatient beds in a correctional treatment center shall be used only for the purpose of providing health services. This paragraph shall remain operative only until January 1, 1993.

SEC 3. Section 1265.7 of the Health and Safety Code is amended to read:

1265.7. (a) (1) The state department shall adopt regulations for the licensure of congregate living health facilities. The regulations shall include minimum standards of adequacy, safety, and sanitation of the physical plant and equipment, minimum standards for staffing with duly qualified personnel, and training of the staff, and minimum standards for providing the services offered.

(2) Regulations for facilities approved to provide services for persons who may be ventilator dependent shall ensure that residents of these facilities are assured appropriate supportive health services in the most normal, least restrictive physical and rehabilitative environment appropriate to individual resident needs.

(3) Regulations for facilities approved to provide services for persons who are terminally ill, catastrophically and severely disabled, or both, shall ensure that residents of these facilities receive appropriate supportive health services in the most normal, least restrictive physical environment appropriate to individual resident needs. These regulations shall be filed with the Secretary of State no later than January 1, 1991.

(b) The state department shall establish an expert advisory committee to assist in the development of the regulations required pursuant to this section. A representative of the department shall act as chairperson of the committee. The members of the expert advisory committee shall serve without compensation, but shall be reimbursed for all necessary expenses actually incurred in the actual performance of their duties. For the purposes of budgeting support

for the expert advisory committee, including the expenses of the members of the committee and necessary staff, the committee shall be organizationally located within the state department. To the extent sufficient funds have been appropriated in the Budget Act, the state department may provide staff support to the advisory committee as the state department may deem is necessary for the conduct of the advisory committee's business. The committee shall meet at the director's pleasure until the time as the proposed regulations are presented for adoption at the public hearing.

(c) Pending adoption of the regulations pursuant to paragraph (3) of subdivision (a), an entity shall be licensed as a congregate living health facility serving persons who are terminally ill, catastrophically and severely disabled or both, by the state department beginning July 1, 1988, if it meets the requirements identified in subdivision (i) of Section 1250 and Section 1267.13.

SEC. 4. Section 1266 of the Health and Safety Code is amended to read:

1266. (a) Each new and renewal application for a license for the health facilities listed below shall be accompanied by an annual fee as set forth below.

The annual fee for a general acute care hospital, acute psychiatric hospital, special hospital, psychiatric health facility, and chemical dependency recovery hospital, based on the number of licensed beds, is as follows:

1–49 beds	$460 plus $8 per bed
50–99 beds	$850 plus $8 per bed
100 or more beds	$1,175 plus $8 per bed

The annual fee for a skilled nursing facility, intermediate care facility, and intermediate care facility/developmentally disabled, based on the number of licensed beds, is as follows:

1–59 beds	$2,068 plus $26 per bed
60–99 beds	$2,543 plus $26 per bed
100 or more beds	$3,183 plus $26 per bed

The fees provided in this subdivision shall be adjusted, commencing July 1, 1983, as proposed in the state department's 1983–84 fiscal year Health Facility License Fee Report to the Legislature. Commencing July 1, 1984, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

(b) The state department shall submit to the Legislature, on or before January 17 of each year, a report describing program costs within the Licensing and Certification Division, and a methodology for calculating fee levels in an amount sufficient to provide revenues equal to (1) the General Fund expenditures for the fiscal year ending on June 30 of that year, as specified in the proposed Governor's Annual Budget, less license fees which shall be collected in that fiscal

year by the Licensing and Certification Program pursuant to sections other than this section, plus (2) the amount of federal funds budgeted for the fiscal year ending June 30 of that year for the Licensing and Certification Program, less federal funds received or credited, or anticipated to be received or credited, during that fiscal year for that purpose The methodology for calculating the fee levels shall include an adjustment which takes into consideration the actual amount of license fee revenue collected in the prior fiscal year pursuant to this section, as compared to the amount of license fee revenue estimated to be collected pursuant to this section for that prior fiscal year.

The report shall specifically identify federal funds received, but not previously budgeted, for the Licensing and Certification Program which are used to offset the amount of General Fund dollars to be recovered through license fees. The report shall also identify the purpose of federal funds received for any additional activities under the Licensing and Certification Program which are not used to offset the amount of General Fund dollars.

(c) The annual fees determined pursuant to this section shall be waived for any health facility conducted, maintained, or operated by this state or any state department, authority, bureau, commission, or officer, or by the Regents of the University of California, or by a local hospital district, city, county, or city and county

(d) The department shall, by July 30 of each year, publish a list of 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.

(e) Prior to the establishment of the annual fee, the state department shall prepare a staffing and systems analysis to ensure efficient and effective utilization of fees collected, proper allocation of departmental resources to licensing and certification activities, survey schedules, complaint investigations, enforcement and appeal activities, data collection and dissemination, surveyor training, and policy development.

The analysis under this subdivision shall include all of the following:

(1) The number of surveyors and administrative support personnel devoted to the licensing and certification of health care facilities.

(2) The percentage of time devoted to licensing and certification activities for the various types of health facilities.

(3) The number of facilities receiving full surveys and the frequency and number of followup visits.

(4) The number and timeliness of complaint investigations.

(5) Data on deficiencies and citations issued, and numbers of citation review conferences and arbitration hearings.

(6) Training courses provided for surveyors.

(7) Other applicable activities of the licensing and certification division.

The analysis shall also include recommendations for administrative changes to streamline and prioritize the survey process, complaint investigations, management information systems, word processing capabilities and effectiveness, consumer information system, and surveyor training.

The annual staffing and systems analysis shall be presented to the Health Care Advisory Committee and the Legislature prior to the establishment and adoption of the annual fee.

(f) The annual fee for a congregate living health facility shall initially, and until adjusted by the Legislature in a Budget Act, be based on the number of licensed beds as follows:

1–3 beds	$ 800
4–6 beds	$1,000
7–10 beds	$1,200
11–15 beds	$1,500
16 or more beds	$1,700

Commencing July 1, 1991, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual budget.

SEC. 4.5. Section 1266 of the Health and Safety Code, as amended by Section 4 of this act, is amended to read:

1266. (a) Each new and renewal application for a license for the health facilities listed below shall be accompanied by an annual fee as set forth below.

The annual fee for a general acute care hospital, acute psychiatric hospital, special hospital, and chemical dependency recovery hospital, based on the number of licensed beds, is as follows:

1–49 beds	$460 plus $8 per bed
50–99 beds	$850 plus $8 per bed
100 or more beds	$1,175 plus $8 per bed

The annual fee for a skilled nursing facility, intermediate care facility, and intermediate care facility/developmentally disabled, based on the number of licensed beds, is as follows:

1–59 beds	$2,068 plus $26 per bed
60–99 beds	$2,543 plus $26 per bed
100 or more beds	$3,183 plus $26 per bed

The fees provided in this subdivision shall be adjusted, commencing July 1, 1983, as proposed in the state department's 1983–84 fiscal year Health Facility License Fee Report to the Legislature. Commencing July 1, 1984, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual Budget Act.

(b) The state department shall submit to the Legislature, on or

before January 17 of each year, a report describing program costs within the Licensing and Certification Division, and a methodology for calculating fee levels in an amount sufficient to provide revenues equal to (1) the General Fund expenditures for the fiscal year ending on June 30 of that year, as specified in the proposed Governor's Annual Budget, less license fees which shall be collected in that fiscal year by the Licensing and Certification Program pursuant to sections other than this section, plus (2) the amount of federal funds budgeted for the fiscal year ending June 30 of that year for the Licensing and Certification Program, less federal funds received or credited, or anticipated to be received or credited, during that fiscal year for that purpose. The methodology for calculating the fee levels shall include an adjustment which takes into consideration the actual amount of license fee revenue collected in the prior fiscal year pursuant to this section, as compared to the amount of license fee revenue estimated to be collected pursuant to this section for that prior fiscal year.

The report shall specifically identify federal funds received, but not previously budgeted, for the Licensing and Certification Program which are used to offset the amount of General Fund dollars to be recovered through license fees. The report shall also identify the purpose of federal funds received for any additional activities under the Licensing and Certification Program which are not used to offset the amount of General Fund dollars.

(c) The annual fees determined pursuant to this section shall be waived for any health facility conducted, maintained, or operated by this state or any state department, authority, bureau, commission, or officer, or by the Regents of the University of California, or by a local hospital district, city, county, or city and county.

(d) The department shall, by July 30 of each year, publish a list of 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.

(e) Prior to the establishment of the annual fee, the state department shall prepare a staffing and systems analysis to ensure efficient and effective utilization of fees collected, proper allocation of departmental resources to licensing and certification activities, survey schedules, complaint investigations, enforcement and appeal activities, data collection and dissemination, surveyor training, and policy development.

The analysis under this subdivision shall include all of the following:

(1) The number of surveyors and administrative support personnel devoted to the licensing and certification of health care facilities.

(2) The percentage of time devoted to licensing and certification activities for the various types of health facilities.

(3) The number of facilities receiving full surveys and the frequency and number of followup visits.

(4) The number and timeliness of complaint investigations.

(5) Data on deficiencies and citations issued, and numbers of citation review conferences and arbitration hearings.

(6) Training courses provided for surveyors.

(7) Other applicable activities of the licensing and certification division.

The analysis shall also include recommendations for administrative changes to streamline and prioritize the survey process, complaint investigations, management information systems, word processing capabilities and effectiveness, consumer information system, and surveyor training.

The annual staffing and systems analysis shall be presented to the Health Care Advisory Committee and the Legislature prior to the establishment and adoption of the annual fee.

(f) The annual fee for a congregate living health facility shall initially, and until adjusted by the Legislature in a Budget Act, be based on the number of licensed beds as follows:

1–3 beds	$ 800
4–6 beds	$1,000
7–10 beds	$1,200
11–15 beds	$1,500
16 or more beds	$1,700

Commencing July 1, 1991, fees provided in this subdivision shall be adjusted annually, as directed by the Legislature in the annual budget.

SEC. 5. Section 1267.9 of the Health and Safety Code is amended to read:

1267.9. (a) The Legislature hereby declares it to be the policy of the state to prevent overconcentrations of intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled—nursing, or congregate living health facilities which impair the integrity of residential neighborhoods. Therefore, the director shall deny an application for a new intermediate care facility/developmentally disabled habilitative license, a new intermediate care facility/developmentally disabled—nursing license, or a congregate living health facility license if the director determines that the location is in such proximity to an existing intermediate care facility/developmentally disabled habilitative, an intermediate care facility/developmentally disabled—nursing or a congregate living health facility as would result in overconcentration.

(b) As used in this section, "overconcentration" means that if a new license is issued, either of the following will occur:

(1) There will be intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally

disabled—nursing, or residential care facilities, as defined in Section 1502, which are separated by a distance of less than 300 feet, as measured from any point upon the outside walls of the structures housing the facilities.

(2) There will be congregate living health facilities serving persons who are terminally ill or catastrophically and severely disabled, as defined in Section 1250, which are separated by a distance of less than 1,000 feet, as measured from any point upon the outside walls of the structures housing the facilities.

Based on special local needs and conditions, the director may approve a separation distance of less than 300 feet or 1,000 feet, whichever is applicable, with the approval of the city or county in which the proposed facility will be located.

(c) At least 45 days prior to approving any application for a new intermediate care facility/developmentally disabled habilitative, a new intermediate care facility/developmentally disabled—nursing, or a congregate living health facility the director shall notify, in writing, the city or county planning authority in which the facility will be located, of the proposed location of the facility.

(d) Any city or county may request denial of the license applied for on the basis of overconcentration of intermediate care facilities/developmentally disabled habilitative, intermediate care facilities/developmentally disabled—nursing, or a congregate living health facility.

(e) Nothing in this section authorizes the director, on the basis of overconcentration, to refuse to renew an intermediate care facility/developmentally disabled habilitative license, an intermediate care facility/developmentally disabled—nursing license, or a congregate living health facility license or to refuse to grant a license upon a change of ownership of an existing intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled—nursing, or a congregate living health facility where there is no change in the location of the facility.

(f) Foster family homes and residential care facilities for the elderly shall not be considered in determining overconcentration of intermediate care facilities/developmentally disabled-habilitative, intermediate care facilities/developmentally disabled-nursing, residential care facilities, as defined in Section 1502, or congregate living health facilities.

SEC. 6. Section 1267.13 of the Health and Safety Code is amended to read:

1267.13. Pursuant to paragraph (3) of subdivision (a) and subdivision (c) of Section 1265.7, this section shall be effective until the adoption of permanent regulations. Notwithstanding, the state department has authority to make reasonable accommodation for exceptions to the standards in this section, providing the health, safety, and quality of patient care is not compromised. No exceptions shall be made for building standards. Prior written approval

communicating the terms and conditions under which the exception is granted shall be required. Applicants shall request the exception in writing accompanied by detailed, supporting documentation.

Congregate living health facilities serving persons who are terminally ill or catastrophically and severely disabled shall conform to the following:

(a) Facilities shall obtain and maintain a valid fire clearance from the appropriate authority having jurisdiction over the facility, based on compliance with state regulations concerning fire and life safety, as adopted by the State Fire Marshal.

(b) The State Fire Marshal, with the advice of the State Board of Fire Services, shall adopt regulations on or before January 1, 1991, following a public hearing, establishing minimum requirements for the protection of life and property for congregate living health facilities serving terminally ill persons and catastrophically and severely disabled persons. These minimum requirements shall recognize the residential and noninstitutional setting of congregate living health facilities serving terminally ill persons and catastrophically and severely disabled persons

(c) Facilities shall be in a homelike residential setting. Living accommodations and grounds shall be related to the facility's function and clientele. Facilities shall provide sufficient space for comfortable living accommodations and privacy for residents, staff, and others who may reside in the facility.

(d) Common rooms, such as living rooms, dining rooms, and dens or other recreation or activity rooms, shall be provided and shall have sufficient space, separation, or both to promote and facilitate the program of activities and to prevent these activities from interfering with other functions. Accommodations shall ensure adequate space for residents to have visitors and for privacy during visits, if desired.

(e) Resident bedrooms shall have adequate space to allow easy passage throughout; permit comfortable usage of furnishings; promote ease of nursing care; and accommodate use of assistive devices, including, but not limited to, wheelchairs, walkers, and patient lifts, when needed.

(f) No room commonly used for other purposes, including, but not limited to, a hall, stairway, attic, garage, storage area, shed, or similar detached building, shall be used as a sleeping room for any resident.

(g) No resident bedroom shall be used as a passageway to another room, bath, or toilet.

(h) Not more than two residents shall share a bedroom.

(i) Equipment and supplies necessary for personal care and maintenance of adequate hygiene shall be readily available to all residents.

(j) Toilets and bathrooms shall be conveniently located. At least one toilet and washbasin shall be provided per six residents. At least one bathtub or shower shall be provided per 10 residents. Individual privacy shall be provided in all toilet, bath and shower areas. Separate toilet, washbasin, and bathtub or shower accommodations

shall be provided for staff.

(k) Sufficient room shall be available throughout the facility to accommodate and serve all persons in comfort and safety. The premises shall be maintained in good repair and shall provide a safe, clean, and healthful environment.

(*l*) Facilities shall have equipment and supplies appropriate to meet the routine and specialized needs of all residents.

(m) All persons shall be protected from hazards throughout the premises:

(1) Stairways, inclines, ramps, open porches, and other areas of potential hazard to residents with poor balance or eyesight shall be made inaccessible unless well lighted and equipped with sturdy hand railings.

(2) Night lights shall be maintained in hallways and passages to nonprivate bathrooms.

(3) All indoor and outdoor passageways and stairways shall be kept free of obstructions.

(4) Fireplaces, woodstoves, and open-faced heaters shall be adequately screened.

(5) Facilities shall assure the inaccessibility of fishponds, wading pools, hot tubs, swimming pools, or similar bodies of water or other areas of potential hazard when not in active use.

(n) Facilities serving persons who are terminally ill or catastrophically and severely disabled shall, in addition to the requirements of this chapter and until specific regulations governing their operation are filed, conform to regulations contained in Chapter 3 of Division 5 of Title 22 of the California Code of Regulations of April 1, 1988, with the exception of the following sections or portions of sections: 72007, 72053, 72073, subdivision (a) of Section 72077, 72097, 72099, 72103, 72203, subdivision (a) of Section 72205, 72301, 72305, subdivision (a) of Section 72325, 72327, 72329, 72331, 72337, subdivisions (b), (g), and (h) of Section 72351, 72353, subdivision (a) of Section 72367, 72373, subdivision (b) of Section 72375, 72401, 72403, 72405, 72407, 72409, 72411, 72413, 72415, 72417, 72419, 72421, 72423, 72425, 72427, 72429, 72431, 72433, 72435, 72437, 72439, 72441, 72443, 72445, 72447, 72449, 72451, 72453, 72455, 72457, 72459, 72461, 72463, 72465, 72467, 72469, 72471, 72473, 72475, 72503, paragraph (2) of subdivision (a) of Section 72513, 72520, 72535, 72555, 72557, subdivisions (a) and (b) of Section 72601, subdivision (d) of Section 72607, subdivisions (a) and (d) of Section 72609, 72611, 72615, 72617, 72629, 72631, 72633, 72635, subdivision (b), (c), and (d) of Section 72639, 72641, and 72665.

(o) (1) Facilities serving persons who are terminally ill or catastrophically and severely disabled shall have an administrator who is responsible for the day-to-day operation of the facility. The administrator may be either a licensed registered nurse, a nursing home administrator, or the licensee. The administrator shall be present at the facility a sufficient number of hours to ensure the smooth operation of the facility. If the administrator is also the

registered nurse fulfilling the duties specified in paragraph (2), the administrator shall not be responsible for more than one facility. In all other circumstances, the administrator shall not be responsible for more than three facilities with an aggregate total of 75 beds and these facilities shall be within one hour's surface travel time of each other.

(2) (A) For each congregate living health facility of more than six beds serving persons who are terminally ill or catastrophically and severely disabled there shall be, at a minimum, a registered nurse or licensed vocational nurse awake and on duty at all times. A registered nurse shall be awake and on duty eight hours a day, five days a week.

(B) For each congregate living health facility of six or fewer beds serving persons who are terminally ill or catastrophically and severely disabled a registered nurse shall visit each patient at least twice a week for approximately two hours, or more as patient care requires.

(C) For all congregate living health facilities serving persons who are terminally ill or catastrophically and severely disabled a registered nurse shall be available for consultation and able to come into the facility within 30 minutes, if necessary, when no registered nurse is on duty. In addition, certified nurse assistants, or persons with similar training and experience as determined by the department, shall be awake and on duty in the facility in at least the following ratios: facilities with six beds or less, one per shift: facilities with 7 to 12 beds, two per shift; facilities with 13 to 25 beds, three per day and evening shifts and two per nocturnal shift. No nursing services personnel shall be assigned housekeeping or dietary duties.

(3) Notwithstanding the provisions of this subdivision, the facility shall provide appropriately qualified staff in sufficient numbers to meet patient care needs.

(4) Nursing service personnel shall be employed and on duty in at least the number and with the qualifications determined by the department to provide the necessary nursing services for patients admitted for care. The department may require a facility to provide additional professional, administrative, or supportive personnel whenever the state department determines through a written evaluation, that additional personnel is needed to provide for the health and safety of patients.

(5) All staff members shall receive orientation regarding care appropriate for the patients' diagnoses and individual resident needs. Orientation shall include a minimum of 16 hours during the first 40 hours of employment.

(6) Nothing in this chapter shall prevent the use of volunteers; however, volunteers shall not be used as substitutes for the personnel required in the above sections. Volunteers providing patient care services shall:

(A) Be provided clearly defined roles and written job descriptions.

(B) Receive orientation and training equivalent to that provided paid staff.

(C) Possess education and experience equal to that required of paid staff performing similar functions.

(D) Conform to the facility's policies and procedures.

(E) Receive periodic performance evaluations.

These interim regulations are exempt from the review requirements pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code and become inoperative upon the filing of the permanent regulations, or on January 1, 1991, whichever occurs first.

SEC. 7. Section 1267.16 of the Health and Safety Code is amended to read:

1267.16. (a) A congregate living health facility which serves six or fewer persons shall be considered a residential use of property for purposes of any zoning ordinance or law related to the residential use of property. This article does not forbid any city, county, or local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a congregate living health facility as long as these restrictions are identical to those applied to single-family residences.

(b) This article does not forbid the application to a congregate living health 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, except as provided in subdivisions (a) and (b) of Section 1267.9 and this section.

(c) Any congregate living health facility of more than six beds for persons who are terminally ill and any congregate living health facility of more than six beds for persons who are catastrophically and severely disabled shall be subject to the conditional use permit requirements of the city or county in which it is located unless those requirements are waived by the city or county. However, any facility that, on the effective date of this section, is performing the functions of a congregate living health facility for persons who are terminally ill and that is subsequently licensed as a congregate living health facility within 18 months of the effective date of this section shall not be subject to the conditional use permit requirements of the city or county in which it is located, unless the number of beds is increased.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide congregate living health facilities to more persons, and especially persons who are catastrophically and severely disabled or diagnosed as having a terminal illness, at the earliest possible time, it is necessary that this act take effect immediately.

SEC. 9. Section 4.5 incorporates amendments to Section 1266 of the Health and Safety Code proposed by both this bill and AB 365. It shall only become operative if (1) both bills are enacted and become effective on or before January 1 1990, but this bill is operative

first, (2) each bill amends Section 1266 of the Health and Safety Code, and (3) this bill is enacted after AB 365, in which case Section 1266 of the Health and Safety Code as amended by Section 4 of this bill shall remain operative only until the operative date of AB 365, at which time Section 1266 of the Health and Safety Code as amended by Section 4.5 of this bill shall become operative and Section 1266 of the Health and Safety Code as amended by Section 4 of this bill shall become inoperative.

CHAPTER 1394

An act to amend Section 7 of Chapter 81 of the Statutes of 1989, and to add Section 8203.5 to the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) Since 1932, early childhood education and child development programs have been operated as part of the school programs that are conducted under the authority of the Superintendent of Public Instruction. In the 1988–89 fiscal year, 110,000 children in California were served in the state program of early childhood education and child development administered by the Superintendent of Public Instruction, as set forth in Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code.

(b) Participation and enrollment in an early childhood education or child development program provides an opportunity for many children to hear their first English words (one in three speaks another language), to be introduced to the idea of numbers, to develop basic language concepts, to learn how to get along with other children and adults, and to begin to develop a positive self-image.

(c) The Legislature has stated its intent that early childhood education and child development programs be a "concomitant part of the educational system" by providing young children an equal opportunity for later school success. Those programs are considered by the general public to be an integral and essential part of the state's public education system.

(d) Early childhood education programs for children of low-income families have been shown to increase high school graduation rates and college entry rates, to reduce the need for special education and grade level retention, and to reduce high

school dropout rates.

(e) In the state's early childhood education and development programs, each child is to receive an education program which is appropriate to his or her developmental, cultural, and linguistic needs. Each child is to receive a developmental profile, updated at regular intervals, which will be passed on to his or her elementary school.

(f) In view of the unique function of early childhood education and child development programs, in supporting school districts by directly preparing children for participation in the public schools and by assisting those children in resolving special school-related problems, these programs constitute an essential and integral component of the overall system to carry out the mission of the public schools. Accordingly, in order to fully implement subdivision (b) of Section 8 of Article XVI of the California Constitution, which requires, in its introductory paragraph, a minimum level of funding "for the support" of school districts, as defined, and community college districts, it is necessary to include, within the calculation of that funding, the funding provided by the Legislature for all early childhood education and development programs. Moreover, in accordance with the educational role of those programs, it is the responsibility of the Superintendent of Public Instruction to continue to ensure that all contracts for early childhood education and child development programs provide support to the public school system of this state through the delivery of appropriate educational services to the children served by the program. In addition, Section 8262.1 of the Education Code, as added by this act, constitutes a necessary statutory implementation of that determination, which is consistent with the legislative history of the statutes that provide for the operation of early childhood education and child development programs.

(g) For the period from the 1986–87 fiscal year to the present, the state's early childhood education and development programs have received funding adjustments for cost-of-living and enrollment increases that have been lower, overall, than the comparable adjustments for base revenue limits for school districts.

However, it is the intent of the Legislature that the inclusion of early childhood education and child development programs within the calculation of the state's education funding obligation pursuant to Proposition 98 is not to result in requiring in that calculation the use of the lower level of funding received by these programs in the 1986–87 fiscal year.

SEC. 2. Section 8203.5 is added to the Education Code, to read:

8203.5. (a) The Superintendent of Public Instruction shall ensure that each contract entered into under this chapter to provide child care and development services, or to facilitate the provision of those services, provides support to the public school system of this state through the delivery of appropriate educational services to the children served pursuant to the contract.

(b) The Superintendent of Public Instruction shall ensure that all contracts for child care and development programs include a requirement that each public or private provider maintain a developmental profile to appropriately identify the emotional, social, physical, and cognitive growth of each child served in order to promote the child's success in the public schools. To the extent possible, the State Department of Education shall provide a developmental profile to all public and private providers using existing profile instruments that are most cost efficient. The provider of any program operated pursuant to a contract under Section 8262 shall be responsible for maintaining developmental profiles upon entry through exit from a child development program.

(c) Notwithstanding any other provision of law, "moneys to be applied by the state," as used in subdivision (b) of Section 8 of Article XVI of the California Constitution, includes funds appropriated for the Child Care and Development Service Act pursuant to Chapter 2 (commencing with Section 8200) of Part 6, whether or not those funds are allocated to school districts, as defined in Section 41302.5, or community college districts.

(d) This section is not subject to Part 34 (commencing with Section 62000).

SEC. 3. Section 7 of Chapter 81 of the Statutes of 1989 is amended to read:

Sec. 7. The State Department of Education shall contract for a study of the impact on the quality of adult to child ratios of 1:8, 1:9, and 1:10 in child development classrooms for children who are three to five years of age. The study shall be submitted in a report to the Legislature on or before January 15, 1992. The department shall contract with an independent contractor to administer and prepare a report on the study. The study shall, to the extent feasible, utilize data collected from a minimum of 200 classrooms or 25 percent of the existing child development sites, whichever is greater. It is the intent of the Legislature that any costs incurred by the department in contracting for the study be paid from funds available pursuant to subdivision (c) of Provision 16 of Item 6110-196-001 of Section 2 of the Budget Act of 1989. The Superintendent of Public Instruction shall provide a waiver from the required adult-to-child ratios of this section for the three-year period during which the study is conducted, upon the request of any child care and development contractor for permission to participate voluntarily in the study.

SEC. 4. The annual average daily attendance for children receiving preschool services pursuant to Article 7 (commencing with Section 8235) of Chapter 2 of Part 6 of the Education Code shall be calculated on the basis that one unit of average daily attendance equals the product of 175 and the minimum number of hours of preschool services required per day under the contract.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into

immediate effect. The facts constituting the necessity are:

In order to provide for the timely implementation of Proposition 98, as adopted by the state electorate on November 8, 1988, with regard to programs for early childhood education and child development, and to make timely revisions to a child development study that the Superintendent of Public Instruction is required under existing law to conduct, it is necessary that this act take effect immediately.

CHAPTER 1395

An act to amend Sections 2550.2, 39619.4, 41206, 41341, 42238.4, and 52616 of the Education Code, to amend Sections 7906, 7907, and 7908 of the Government Code, and to amend Section 37 of Chapter 82 of the Statutes of 1989, relating to school finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 2550.2 of the Education Code is amended to read:

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

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

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

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

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

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

(b) The Superintendent of Public Instruction shall multiply the revenue limit per unit of average daily attendance computed in

subdivision (a) by the number of units of average daily attendance for county juvenile court school programs for the current fiscal year.

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

(d) As a condition of receiving an equalization adjustment pursuant to paragraph (1) of subdivision (a), the county superintendent of schools shall certify to the Superintendent of Public Instruction that all the funds received pursuant to this section are expended solely for purposes of operating juvenile court school programs pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27 or of serving pupils enrolled in community schools pursuant to subdivision (c) of Section 1981.

SEC. 2. Section 39619.4 of the Education Code is amended to read:

39619.4. Notwithstanding any other provision of law, for the 1988–89 fiscal year, school districts may transfer matching funds to the deferred maintenance fund by September 1, 1989, based on the average determined in subdivision (b) of Section 39619. Funds appropriated in paragraph (2) of subdivision (a) of Section 36 of Chapter 82 of the Statutes of 1989 shall be allocated pursuant to Sections 39619 and 39619.2, as amended by Sections 5 and 6, respectively, of Chapter 83 of the Statutes of 1989.

SEC. 3. Section 41206 of the Education Code is amended to read:

41206. (a) For purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution, all determinations of percentages, amounts, revenues, appropriations, allocations, proceeds of taxes, increases in cost of living, or enrollments shall be based upon the best available estimate until actual data becomes available, and then upon actual data when it is available.

(b) (1) Within nine months following the end of any fiscal year, the Superintendent of Public Instruction and the Director of Finance shall recalculate, as necessary, and jointly certify all actual data pertaining to school districts, as defined, for the prior fiscal year. Any amount of funding required by subdivision (b) of Section 8 of Article XVI of the California Constitution to be appropriated to school districts for that year, less any amounts already appropriated for that year including any amounts appropriated for deficiencies pursuant to paragraph (2), shall be set aside by the Controller and, if not appropriated to school districts by the Legislature within 90 days, shall be allocated to school districts by the Controller in proportion to the enrollment in school districts as determined for purposes of Section 8.5 of Article XVI of the California Constitution.

(2) For purposes of Section 8 of Article XVI of the California Constitution, appropriations for deficiencies shall be deemed to be appropriations in the fiscal year in which the deficiencies occurred.

(c) Within nine months following the end of any fiscal year, the Chancellor of the California Community Colleges and the Director of Finance shall recalculate, as necessary, and jointly certify all actual

data pertaining to community college districts, as defined, for the prior fiscal year. Any amount of funding required by subdivision (b) of Section 8 of Article XVI of the California Constitution to be appropriated to community college districts for that year, less any amounts already appropriated for that year, shall be set aside by the Controller and, if not appropriated to community college districts by the Legislature within 90 days, shall be allocated to community college districts by the Controller in proportion to the enrollment in community college districts as determined for purposes of Section 8.5 of Article XVI of the California Constitution.

SEC. 4. Section 41341 of the Education Code is amended to read:

41341. (a) (1) If, during any fiscal year, there is apportioned to a school district or to any fund from Section A of 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 hereby authorized to adopt, not later than the first 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 subdivision shall be added to or allowed from any portion of the State School Fund.

(2) Notwithstanding paragraph (1), excesses may be withheld or deficiencies added to apportionments on account of audit exceptions in any fiscal year in which they are certified by the Superintendent of Public Instruction.

(b) If, during any fiscal year, there is apportioned to a community college district or to any fund from Section B of 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 Chancellor of the California Community Colleges, in accordance with regulations that he or she is hereby authorized to adopt, not later than the first 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 Chancellor of the California Community Colleges under this subdivision shall be added to or allowed from any portion of the State School Fund.

SEC. 5. Section 42238.4 of the Education Code is amended to read:

42238.4. (a) For the 1989–90 fiscal year, the county superintendent shall compute an equalization adjustment for each district, except as provided under subdivision (c), so that no district's base revenue limit per unit of average daily attendance is less than

the 1988–89 fiscal year statewide average base revenue limit for the appropriate size and type of district listed in subdivision (b) plus the inflation adjustment specified in Section 42238.1 for the current fiscal year for the appropriate type of district. For purposes of this subdivision, both the statewide average base revenue limits and the base revenue limits of each school district shall include any funding received pursuant to Section 54060.5, 54060.6, or 54060.7.

For purposes of this section, the district base revenue limit and the statewide average base revenue limit shall not include any amounts attributable to Section 45023.4, 46200, or 46201.

(b) Subdivision (a) shall apply to the following school districts, which shall be grouped according to size and type as follows:

District	ADA
Elementary	less than 101
High School	less than 301
High School	more than 300
Unified	less than 1,501
Unified	more than 1,500

(c) For the 1989–90 fiscal year, the county superintendent shall compute an equalization adjustment for each elementary school district having an average daily attendance of more than 100 so that no such district's base revenue limit per unit of average daily attendance is less than the 1987–88 fiscal year statewide average base revenue limit for those districts plus any amount received pursuant to Sections 54060.3 and 54061 in the 1987–88 fiscal year plus the amount added to the base revenue limit for that district for the 1988–89 fiscal year pursuant to Section 42240 plus the inflation adjustment specified in Section 42238.1 for those districts for the 1988–89 fiscal year and the current fiscal year.

(d) The Superintendent of Public Instruction shall compute a revenue limit equalization adjustment for each school district's base revenue limit per unit of average daily attendance as follows:

(1) Add the products of the amount computed for each school district by the county superintendent pursuant to subdivision (a) and the average daily attendance used to calculate the district's revenue limit for the current fiscal year.

(2) Divide the amount appropriated for purposes of this section for the current fiscal year by the amount computed pursuant to paragraph (1)

(3) Multiply the amount computed for the school district pursuant to subdivision (a) or (c), as appropriate, by the amount computed pursuant to paragraph (2).

SEC. 6. Section 52616 of the Education Code is amended to read:

52616. The Superintendent of Public Instruction shall determine an adult block entitlement for school districts that maintain education programs for adults. This entitlement shall be paid from appropriations to Section A of the State School Fund as a part of the

principal apportionment to school districts.

(a) For the 1983–84 fiscal year, each district's adult revenue limit per unit of average daily attendance for the prior fiscal year calculated pursuant to Provision 1 of Item 6100-156-001 of the Budget Act of 1982 shall be increased by seventy dollars ($70). For the 1984–85 fiscal year to the 1989–90 fiscal year, inclusive, each district's adult revenue limit per unit of average daily attendance for the prior fiscal year shall be increased by an amount equal to 6 percent of the prior year's statewide average adult revenue limit per unit of average daily attendance, provided that no such revenue limit per unit of average daily attendance shall be less than 1.06 times the prior fiscal year's statewide average adult revenue limit per unit of average daily attendance. For the 1988–89 fiscal year and each fiscal year thereafter, each district's adult revenue limit per unit of average daily attendance for the prior fiscal year shall be increased by an amount equal to the percentage change determined pursuant to subdivision (b) of Section 42238.1 times the prior year's statewide average adult revenue limit per unit of average daily attendance, provided that no such revenue limit per unit of average daily attendance shall be less than one plus the percentage change determined pursuant to subdivision (b) of Section 42238.1 times the prior fiscal year's statewide average adult revenue limit per unit of average daily attendance.

(b) For the purposes of the block entitlement, the district's average daily attendance shall be the lesser of paragraph (1) or (2):

(1) The 1982–83 adult average daily attendance authorized for funding purposes for the programs specified in Section 41976, as specified in Item 6100-156-001 of the Budget Act of 1982, multiplied by 1.025 in the 1983–84 fiscal year and each fiscal year thereafter.

(2) The actual adult average daily attendance for the programs specified in Section 41976.

(c) The adult block entitlement shall be computed by multiplying the adult revenue limit per unit of average daily attendance from subdivision (a) and the adult average daily attendance allowed in subdivision (b). The adult block entitlement shall be deposited in a separate fund of the district to be known as the "adult education fund." Moneys in an adult education fund shall be expended only for adult education purposes. Moneys received for programs other than adult education shall not be expended for adult education.

(d) If the adult average daily attendance of a school district in any fiscal year is less than the adult average daily attendance utilized to compute the funded district adult education block entitlement for that fiscal year, the district shall receive an apportionment only for the actual average daily attendance generated. Any surpluses accrued as a result of average daily attendance not generated in a district's block entitlement shall be reallocated after the annual apportionment by the Superintendent of Public Instruction to provide services to welfare recipients pursuant to Section 33117.5. Any remaining surplus shall be reallocated to meet unanticipated

growth in adult education. The receipt of reallocated funds shall not be used for computational purposes for the district's block entitlement for subsequent fiscal years.

(e) Each school district which conducted adult education programs for substantially handicapped adults in activity centers, work activity centers, sheltered workshops, state hospitals, and other community settings, shall set aside an amount of money from its adult education block entitlement equal to its current fiscal year revenue limit times the average daily attendance generated in these facilities in the 1979–80 fiscal year times 1.02, subject to the following:

(1) The classes and courses offered in activity centers, work activity centers, sheltered workshops, and state hospitals shall be authorized pursuant to subdivision (e) of Section 41976.

(2) A school district shall operate classes in these facilities and shall expend all funds set aside pursuant to this subdivision and shall use all funds exclusively for those classes for substantially handicapped adults.

(3) The conditions imposed by paragraphs (1) and (2) may be waived by the Superintendent of Public Instruction upon certification from the school district that the local demand for the program is less than the required level of service.

SEC. 7. Section 7906 of the Government Code is amended to read:

7906. For school districts:

(a) "ADA" means a school district's second principal apportionment units of average daily attendance as determined pursuant to Section 42238.5 of the Education Code, including average daily attendance in summer school, regional occupational centers and programs, and apprenticeship programs, and excluding average daily attendance in adult education programs. All other units of average daily attendance including, but not limited to, special day classes for special education pupils, shall be included.

(1) For purposes of this subdivision, the average daily attendance of summer school programs shall be determined pursuant to subparagraph (F) of paragraph (1) of subdivision (a) of Section 14022.5 of the Education Code.

(2) For purposes of this subdivision, the average daily attendance of apprenticeship programs shall be determined pursuant to subparagraph (D) of paragraph (1) of subdivision (a) of Section 14022.5 of the Education Code.

(b) "Foundation program level" means:

(1) For the 1978–79 fiscal year, one thousand two hundred forty-one dollars ($1,241) for elementary districts, one thousand three hundred twenty-two dollars ($1,322) for unified districts, and one thousand four hundred twenty-seven dollars ($1,427) for high school districts.

(2) For the 1979–80 fiscal year through the 1986–87 fiscal year, inclusive, the levels specified in paragraph (1) increased by the lesser of the change in cost of living or California per capita personal

income for the preceding calendar year.

(3) For the 1986–87 fiscal year, the levels specified in paragraph (2) increased by one hundred eighty dollars ($180) for elementary districts, one hundred ninety-one dollars ($191) for unified districts, and two hundred seven dollars ($207) for high school districts.

(4) For the 1987–88 fiscal year, the levels specified in paragraph (3) increased by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year.

(5) For the 1988–89 fiscal year and each fiscal year thereafter, the foundation program level shall be the appropriations limit of the school district for the current fiscal year, plus amounts paid for any nonreimbursed court or federal mandates imposed on or after November 6, 1979, less the sum of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year which are from the proceeds of taxes.

(C) Locally voted taxes received during the current fiscal year, such as parcel taxes or square foot taxes, unless for voter-approved bonded debt.

(D) Any other local proceeds of taxes received during the current fiscal year, other than local taxes which count towards the revenue limit, such as excess bond revenues transferred to a district's general fund pursuant to Section 15234 of the Education Code.

(c) "Proceeds of taxes" shall be deemed to include subventions received from the state only if those subventions are for one of the following two purposes:

(1) Basic aid subventions of one hundred twenty dollars ($120) per ADA.

(2) Additional apportionments which, when added to the district's local revenues as defined in Section 42238 of the Education Code, do not exceed the foundation program level for that district. In no case shall subventions received from the state for reimbursement of state mandates in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 or for reimbursement of court or federal mandates imposed on or after November 6, 1979, be considered "proceeds of taxes" for the purposes of this section.

(d) Proceeds of taxes for a fiscal year shall not include any proceeds of taxes within the district's beginning balance or reserve, unless those funds were not appropriated in a prior fiscal year. Funds that were appropriated to a reserve or other fund referenced in Section 5 of Article XIII B of the California Constitution shall be deemed to be appropriated for the purpose of this paragraph.

(e) The remainder of the state apportionments, including special purpose apportionments and categorical aid subventions shall not be considered proceeds of taxes for a school district.

(f) Each school district shall report to the Superintendent of Public Instruction and to the Director of Finance at least annually its

appropriation limit, its appropriations subject to limitation, the amount of its state aid apportionments and subventions included within the proceeds of taxes of the school district, and amounts excluded from its appropriations limit, at a time and in a manner prescribed by the Superintendent of Public Instruction and approved by the Director of Finance.

(g) For the 1988–89 fiscal year and each fiscal year thereafter, nothing in paragraph (2) of subdivision (c) shall be so construed as to require that the amount determined pursuant to subdivision (b) be multiplied by the amount determined pursuant to subdivision (a) for purposes of determining the amount of state aid included in school district "proceeds of taxes" for purposes of this section.

SEC. 7.5. Section 7907 of the Government Code is amended to read:

7907. For county superintendents of schools:

(a) "Proceeds of taxes" shall be deemed to include subventions received from the state only if those subventions are received for one or more of the following programs:

(1) Educational services provided directly to pupils, including, but not limited to, the services described in paragraph (2) of subdivision (b) of Section 2550 of, subdivision (c) of Section 1981 of, Sections 1904, 2550.2, 2551.3, 8152, 48633, 52570, and 58804 of, and Article 1 (commencing with Section 52300) of Chapter 9 of Part 28 of, the Education Code.

(2) Support services provided to school districts, including, but not limited to, the services described in paragraph (2) of subdivision (c) of Section 2550 of, and Sections 1510, 2509, 2551, 2554, and 2555 of, the Education Code.

(3) Direct services provided to school districts, as described in paragraph (1) of subdivision (c) of Section 2550 of the Education Code.

(b) For programs identified in paragraph (1) of subdivision (a), an amount shall be calculated equal to the appropriations made for those programs from the proceeds of taxes for the 1978–79 fiscal year, adjusted for the 1979–80 and 1980–81 fiscal years by the lesser of the change in cost of living or change in California per capita personal income applicable to each year and by the percentage change in average daily attendance in those programs for the 1979–80 and 1980–81 fiscal years.

(c) For all other programs operated by the county superintendent of schools, including, but not limited to, the programs identified in paragraphs (2) and (3) of subdivision (a), an amount shall be calculated equal to the appropriations made for those programs from the proceeds of taxes for the 1978–79 fiscal year, adjusted for the 1979–80 and 1980–81 fiscal years by the lesser of the change in cost of living or change in California per capita personal income for each year and by the percentage change in population (as defined by subdivision (d) of Section 7901) for all the districts in the county for the 1979–80 and 1980–81 fiscal years. The "percentage change in

population" for the program identified in paragraph (3) of subdivision (a) shall be, for purposes of this subdivision, the percentage change in direct services average daily attendance as calculated pursuant to paragraph (1) of sudivision (c) of Section 2550 of the Education Code.

(d) The sum of the amounts calculated in subdivisions (b) and (c) shall be the appropriations limit for the county superintendent for the 1980–81 fiscal year.

(e) For the 1981–82 fiscal year and each year thereafter, the appropriations limit for the prior year shall be adjusted by the appropriate average daily attendance and the lesser of the change in cost of living or California per capita personal income.

(f) For the 1981–82 fiscal year through the 1987–88 fiscal year, state apportionments to county superintendents in excess of the amounts in subdivision (d) or (e) shall not be considered proceeds of taxes for a county superintendent of schools.

(g) For the 1988–89 fiscal year and each fiscal year thereafter, the state apportionments to county superintendents which shall be considered "proceeds of taxes" for a county superintendent of schools shall be equal to the lesser of the following:

(1) The total amount of state apportionments received for that fiscal year, excluding amounts paid for reimbursement of state mandates in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 or for reimbursement of court or federal mandates imposed on or after November 6, 1979.

(2) The appropriations limit for the county superintendent for that fiscal year, less the sum of all of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year which are from the proceeds of taxes.

(C) Locally voted taxes received during the current year, such as parcel taxes or square foot taxes, other than for voter-approved bonded debt

(D) Any other local proceeds of taxes received during the current year, such as excess bond revenues transferred to a district's general fund pursuant to Section 15234 of the Education Code.

(E) Local proceeds of taxes received during the current fiscal year which offset state aid.

(3) Amounts paid for court or federal mandates shall be excluded from the appropriations limit.

SEC. 8. Section 7908 of the Government Code is amended to read:

7908. For community college districts:

(a) As used in this section, "ADA" means the annual average daily attendance reported for students attending the community college district during the fiscal year.

(b) "Proceeds of taxes" shall be deemed to include subventions

from the state, including special purpose apportionments, but excluding subventions received from the state for reimbursement of state mandates in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 or for reimbursement of court or federal mandates imposed on or after November 6, 1979, only if those subventions, when added to the district's local resources, as defined in items (2) and (3) of subdivision (a) of Section 84904 of the Education Code, do not exceed:

(1) For the 1978–79 fiscal year, the lesser of the statewide average revenues or the actual revenues received per ADA, as defined in paragraph (1) of subdivision (c) of Section 84700 of the Education Code, multiplied by the ADA in the district for the 1978–79 fiscal year.

(2) For the 1979–80 through the 1987–88 fiscal years, the amount specified in paragraph (1) adjusted by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year and the percentage change in the district's ADA for that fiscal year.

(3) For the 1988–89 fiscal year and each fiscal year thereafter, the appropriations limit of that district, plus amounts paid for any nonreimbursed court or federal mandates imposed on or after November 6, 1979, less the sum of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year which are from the proceeds of taxes.

(C) Locally voted taxes received during the current fiscal year, such as parcel taxes or square foot taxes, unless for voter-approved bonded debt.

(D) Any other local proceeds of taxes received during the current fiscal year, other than local taxes which count towards the revenue limit, such as excess bond revenues transferred to a district's general fund pursuant to Section 15234.

(c) Each community college district shall report to the Chancellor of the California Community Colleges and to the Director of Finance at least annually its appropriations limit, its appropriations subject to limitation, the amount of its state aid apportionments and subventions included within the proceeds of taxes of the district, and amounts excluded from the appropriations limit, at a time and in a manner prescribed by the Chancellor of the California Community Colleges and approved by the Director of Finance.

SEC 9. Section 37 of Chapter 82 of the Statutes of 1989 is amended to read:

Sec. 37. Prior to the appropriation of any of the funding reserved pursuant to Section 12.31 of the Budget Act of 1989 for any other purpose, the amount of that funding shall be adjusted to accurately reflect the state funding obligation under subdivision (b) of Section 8 of Article XVI of the California Constitution. Subsequent to that

adjustment, that funding shall be appropriated in accordance with, and in the order of, the following priorities:

(a) For purposes of deficiency allocation for kindergarten and grades 1 to 12, inclusive, pursuant to Section 27 of the Budget Act of 1989.

(b) Up to one hundred ten million dollars ($110,000,000), for purposes of the program to reduce class size pursuant to Senate Bill 666 of the 1989–90 Regular Session.

(c) In support of other legislative measures, where the funding of those measures would qualify under the definition set forth in subdivision (a) of Section 41202 of the Education Code.

SEC. 10. Notwithstanding any other provision of law, Provision 16 of Item 6110-101-001 of Section 2.00 of the Budget Act of 1989 shall only apply to the average daily attendance of pupils 19 years of age or older who are enrolled in independent study programs.

SEC. 11. Notwithstanding Provision 3 of Item 6110-101-001 of Section 2.00 of the Budget Act of 1989 and any other provision of law, each 60-minute hour of teaching time devoted 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 three dollars and ninety-three cents ($3.93) per hour. For these purposes, each hour of teaching time may include up to 10 minutes for passing time and breaks.

SEC. 12. Notwithstanding subdivision (c) of Provision 4 of Item 6110-101-001 of Section 2.00 of the Budget Act of 1989, for any apprentice program offered pursuant to Section 8152 of the Education Code that is transferred from a school district maintaining kindergarten and grades 1 to 12, inclusive, or a county office of education to a community college district in 1989–90, the Controller, upon certification by the Superintendent of Public Instruction, shall transfer, prior to the first or second principal apportionment, as appropriate, from Schedule (d) of Item 6110-101-001 of Section 2.00 of the Budget Act of 1989 to Schedule (a) of Item 6870-101-001 of Section 2.00 of the Budget Act of 1989, an amount equal to the number of hours for which the apprentice program received funding in 1988–89 times three dollars and ninety-three cents ($3.93).

SEC. 13. Notwithstanding any other provision of law, the sum of four hundred eighty-one thousand dollars ($481,000) is hereby appropriated in augmentation of, and for purposes of, Schedule (a) (1) of Item 6110-226-001 of Section 2.00 of the Budget Act of 1989. Item 6110-226-001 of Section 2.00 of the Budget Act of 1989 may be used for programs operated pursuant to Section 42243.7 of the Education Code (for transfer to Item 6110-101-001).

SEC. 14. Notwithstanding any other provision of law, the sum of two hundred fifty-three thousand dollars ($253,000) is hereby appropriated in augmentation of Item 6110-226-001 of Section 2.00 of the Budget Act of 1989 for the purpose of Section 8152 of the Education Code (for transfer to Item 6110-101-001).

SEC. 15. Notwithstanding any other provision of law, the sum of four hundred fifty-two thousand dollars ($452,000) is hereby appropriated in augmentation of, and for purposes of, Schedule (e) (1) of Item 6111-226-001 of Section 2.00 of the Budget Act of 1989.

SEC. 16. Notwithstanding any other provision of law, the appropriations for Schedule (h) (1) and (h) (2) of Item 6110-226-001 of Section 2.00 of the Budget Act of 1989 are one million nine hundred sixty-eight thousand dollars ($1,968,000) and twelve thousand dollars ($12,000), respectively.

SEC. 17. Of the amount appropriated in Item 6110-106-001 of Section 2.00 of the Budget Act of 1989, up to four million two hundred thousand dollars ($4,200,000) shall be available for equalization of juvenile court school revenue limits pursuant to Section 2550.2 of the Education Code, as amended by this act.

SEC. 18. Notwithstanding any other provision of law, for the 1988–89 fiscal year, accruals to funds maintained by the county or district superintendent of schools resulting from the funds allocated pursuant to Schedule (1) of Section 36 of Chapter 82 of the Statutes of 1989, shall be excluded from fund balances for purposes of calculating excess reserves.

SEC. 19. Notwithstanding any other provision of law, the sum of twenty million dollars ($20,000,000) that was appropriated to the Superintendent of Public Instruction under paragraph (9) of subdivision (a) of Section 36 of Chapter 82 of the Statutes of 1989, for purposes of Chapter 1362 of the Statutes of 1988, shall be allocated for purposes of the staff development programs established pursuant to Chapter 1362 of the Statutes of 1988.

SEC. 20. Notwithstanding any other provision of law, the California Indian Education Center established and funded under subparagraph (C) of paragraph (6) of subdivision (a) of Section 36 of Chapter 83 of the Statutes of 1989 for Imperial County shall serve Imperial, San Bernardino, Riverside, and San Diego Counties, and the California Indian Education Center established and funded under that subparagraph for Los Angeles County shall serve Los Angeles, Ventura, and Santa Barbara Counties.

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 that the changes made by this act may become effective in the 1989–90 school year, it is necessary that this act take effect immediately.

CHAPTER 1396

An act to amend Sections 4648, 4690, and 4691 of, and to add Sections 4690.2 and 4691.5 to, the Welfare and Institutions Code, relating to developmental services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 4648 of the Welfare and Institutions Code is amended to read:

4648. In order to achieve the stated objectives of any individual program plan, the regional center shall conduct activities including, but not limited to, the following:

(a) Program coordination which may include securing, through purchase or referral, services specified in the person's plan, coordination of service programs, information collection and dissemination, and measurement of progress toward objectives contained in the person's plan.

The regional center shall assign a program coordinator who shall be responsible for implementing, overseeing, and monitoring each individual program plan. The program coordinator may be an employee of the regional center or may be a qualified individual or employee of an agency with whom the regional center has contracted to provide program coordination.

Whenever the individual program plan is reviewed, but at least annually, the performance of the program coordinator shall also be reviewed by the regional center, the person with developmental disabilities, and the person's parents or legal guardian or conservator. No person shall continue to serve as a program coordinator for any individual program plan unless there is agreement by all parties that the person should continue to serve as program coordinator.

Nothing shall prevent a person with developmental disabilities or the person's parent, legal guardian, or conservator, from being the program coordinator of the person's individual program plan, if the regional center director agrees that such an arrangement is feasible and in the best interest of the person with the developmental disabilities. If any person listed above is designated as the program coordinator, such person shall not deviate from the agreed-upon program plan and shall provide any information and reports as may be required by the regional center director.

(b) Purchase of needed services.

(1) A regional center may purchase services for a client from any individual or agency which has been properly vendored and which the regional center determines will best accomplish all or any part

of that client's program plan. Vendorization is the process for identification, selection, and utilization of service vendors, based on the qualifications and other requirements necessary in order to provide the vendored service.

(2) A regional center may reimburse an individual or agency for services provided to a regional center client only if the individual or agency has a rate of payment established by the department, pursuant to Chapter 6 of Division 4.5 (commencing with Article 3), and is providing services pursuant to an emergency vendorization or has completed vendorization, and continues to comply with the vendorization requirements. The Director of Developmental Services shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors, and the individual or agency requesting vendorization. The regulations shall include, but need not be limited to:

(A) The vendor application process, and the basis for accepting or denying an application.

(B) The qualifications and requirements for each category of service that may be provided to a regional center client.

(C) The process for assigning any identification numbers necessary for accounting purposes to identify a vendor or a service.

(D) Requirements for emergency vendorization.

(E) Procedures for the termination of vendorization

(F) The procedure for an individual or an agency to appeal any vendorization decision made by the department or a regional center.

(3) In making the initial choice to purchase services from an agency, facility, or individual, the regional center may use a professionally recognized, reliable, and valid instrument of accreditation. The regional center also shall consider both of the following when initiating or renewing a contract or authorization for the purchase of client services:

(A) A vendor's success in achieving the objectives set forth in the individual program plan.

(B) The unit cost of providing services of comparable quality by different vendors, if available.

(4) No purchase of service contract with any agency or individual shall be continued unless the regional center and the person with developmental disabilities, or when appropriate, the person's parents or legal guardian or conservator agree that reasonable progress has been made towards the objectives for which the service provider is responsible.

(5) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing such services.

(6) (A) A regional center may, directly or through an agency acting on behalf of the center, provide placement and follow-along services to developmentally disabled persons in licensed community care or health care facilities. The regional center may also purchase

required out-of-home care for such developmentally disabled persons. In considering appropriate placement alternatives for developmentally disabled children, approval by the child's parent, guardian, or conservator shall be obtained before placement is made.

(B) Each developmentally disabled person placed by the regional center in an out-of-home residential facility shall have the rights specified in this division. These rights shall be brought to the person's attention by such means as the Director of Developmental Services may designate by regulation.

(c) Advocacy for, and protection of, the civil, legal, and service rights of developmentally disabled persons as established in this division.

Whenever the advocacy efforts of a regional center to secure or protect the legal, civil, or service rights of any of its clients prove ineffective, the regional center or the person with developmental disabilities or their parents, legal guardian, or other representative may request the area board to initiate action under the provisions defining area board advocacy functions established in this division.

(d) Community organization and program development including liaison activities with existing service agencies, identification of services needed but unavailable, identification of ineffective services and services of poor quality, identification of programs which may not be in compliance with local, state, and federal statutes and approved regulations.

(e) In order to expand the availability of needed services of good quality, a regional center may take any of the following actions:

(1) Provide information to the area board to assist the area board in determining recommended priorities for program development for inclusion in the state plan.

(2) Request the department to allocate funds from the Developmental Disabilities Program Development Fund to initiate a new program.

(3) Notify the appropriate licensing authority or request the area board to investigate and act upon any agency's possible noncompliance with local, state, or federal laws or regulations.

(4) Provide or secure consultation, training, or technical assistance services for any agency to assist such agency in upgrading the quality of its program. Except in emergency situations, a regional center shall not provide direct treatment and therapeutic services, but shall utilize appropriate public and private community agencies and service providers to obtain such services for its clients.

SEC. 2. Section 4690 of the Welfare and Institutions Code is amended to read:

4690. The Director of Developmental Services shall establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment for nonresidential services purchased by regional centers, and may promulgate regulations establishing program standards, or the process to be used for setting these rates, or both, in order to assure that regional centers may secure

high-quality services for developmentally disabled persons from individuals or agencies vendored to provide these services. In developing the rates pursuant to regulation, the director may require vendors to submit program, cost, or other information, as necessary. The director shall take into account the rates paid by other agencies and jurisdictions for comparable services in order to assure that regional center rates are at competitive levels. In no event shall rates established pursuant to this article be any less than those established for comparable services under the Medi-Cal program.

SEC. 2.5. Section 4690.2 is added to the Welfare and Institutions Code, to read:

4690.2. (a) The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide these services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for setting rates. "In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided in the client's own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

(1) Assist family members in maintaining the client at home.

(2) Provide appropriate care and supervision to ensure the client's safety in the absence of family members.

(3) Relieve family members from the constantly demanding responsibility of caring for the client.

(4) Attend to the client's basic self-help needs and other activities of daily living including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family members.

(b) The provisions of subdivisions (b) to (f), inclusive, of Section 4691 and subdivisions (a) to (f), inclusive, and subdivision (h) of Section 4691.5 applicable to community-based day programs, shall also apply to in-home respite service vendors for the purpose of establishing standards and an equitable process for setting rates, except:

(1) The process specified in paragraph (4) of subdivision (a) of Section 4691.5 for increasing rates for fiscal year 1990–91 shall apply only to the administrative portion of the rate for eligible in-home respite service vendors, and the amount of funds available for this increase shall not exceed three hundred thousand dollars ($300,000) of the total amount appropriated for rate increases. The administrative portion of the rate shall consist of the in-home respite service vendor's allowable costs, other than those for respite worker's salary, wage, benefits, and travel. Vendors eligible for this rate increase shall include only those in-home respite service vendors which received a deficiency adjustment in their permanent or

provisional rate for fiscal year 1989–90, as specified in paragraph (4) of subdivision (a) of Section 4691.5.

(2) In addition, a rate increase shall also be provided for fiscal year 1990–91, for the salary, wage, and benefit portion of the rate for in-home respite service vendors eligible for the increase. The amount of funds available for this rate increase is limited to the remaining funds appropriated for this paragraph and paragraph (1) for fiscal year 1990–91. The amount of increase which each eligible in-home respite service vendor shall receive shall be limited to the amount necessary to increase the salary, wage, and benefit portion of the rate for respite workers to five dollars and six cents ($5.06) per hour in salary and wages plus ninety-five cents ($0.95) in benefits. Vendors eligible for this increase shall include only those in-home respite service vendors whose salary, wage, and benefit portion of their existing provisional or permanent rate, as established by the department for respite workers is below the amounts specified in this paragraph, and the vendor agrees to reimburse its respite workers at no less than these amounts during fiscal year 1990–91 and thereafter. In order to establish rates pursuant to this paragraph, existing programs receiving a permanent or provisional rate shall submit to the department, the program, cost, and other information specified by the department for either the 1988 calendar year, or for the 1988–89 fiscal year. The specified information shall be submitted on forms developed by the department, not later than 45 days following receipt of the required forms from the department, after the effective date of this section Programs which fail to submit the required information within the time specified shall have payment of their permanent or provisional rate suspended until the required information has been submitted.

(3) Effective July 1, 1990, and pursuant to the rate methodology developed by the department, the administrative portion and the salary, wage, and benefit portion of the rates for in-home respite service vendors currently receiving a provisional or permanent rate shall be combined and paid as a single rate.

(4) Rate increases for fiscal year 1990–91 shall be limited to those specified in paragraphs (1) and (2). For fiscal year 1991–92 and all succeeding fiscal years, the provisions of subdivision (c) of Section 4691, which specify that any rate increases shall be subject to the appropriation of sufficient funds in the Budget Act, shall also apply to rates for in-home respite service vendors.

(5) The rate methodology developed by the department may include a supplemental amount of reimbursement for travel costs of respite workers using their private vehicles to and from and between respite sites. The supplemental amount shall be the minimum rate for travel reimbursement for state employees.

SEC. 3. Section 4691 of the Welfare and Institutions Code is amended to read:

4691. (a) The Legislature reaffirms its intent that community-based day programs be planned and provided as part of

a continuum of services to enable persons with developmental disabilities to approximate the pattern of everyday living available to people of the same age without disabilities. The Legislature further intends that standards be developed to ensure high quality services, and that equitable ratesetting procedures based upon those standards be established, maintained, and revised, as necessary. The Legislature intends that ratesetting procedures be developed for all community-based day programs, which include adult development centers, activity centers, infant day programs, behavior management programs, social recreational programs, and independent living programs.

(b) For the purpose of ensuring that regional centers may secure high quality services for persons with developmental disabilities, the State Department of Departmental Services shall promulgate regulations establishing program standards and an equitable process for setting rates of state payment for community-based day programs. These regulations shall include, but are not limited to:

(1) The standards and requirements related to the operation of the program including, but not limited to, staff qualifications, staff-to-client ratios, client entrance and exit criteria, program design, program evaluation, program and client records and documentation, client placement, and personnel requirements and functions.

(2) The allowable cost components of the program including salary and wages, staff benefits, operating expenses, and management organization costs where two or more programs are operated by a separate and distinct corporation or entity

(3) The rate determination processes for establishing rates, based on the allowable costs of the allowable cost components. Different rate determination processes may be developed for establishing rates for new and existing programs, and for the initial and subsequent years of implementation of the regulations. The processes shall include, but are not limited to:

(A) The procedure for identification and grouping of programs by type of day program and approved staff-to-client ratio.

(B) The requirements for an identification of the program, cost, and other information, if any, which the program is required to submit to the department or the regional center, the consequences, if any, for failure to do so, and the timeframes and format for submission and review.

(C) The ratesetting methodology.

(D) A procedure for adjusting rates as a result of anticipated and unanticipated program changes and fiscal audits of the program and a procedure for appealing rates, including the time frames for the program to request an adjustment or appeal, and for the department to respond.

(E) A procedure for increasing established rates and the allowable range of rates due to cost-of-living adjustments.

(F) A procedure for increasing established rates as a result of

Budget Act appropriations made pursuant to the ratesetting methodology established pursuant to Section 4691.5 and subdivision (c).

The department shall develop these regulations in consultation with representatives from organizations representing the developmental services system as determined by the department. The State Council on Developmental Disabilities, the Organization of Area Boards, and other organizations representing regional centers, providers, and clients shall have an opportunity to review and comment upon the proposed regulations prior to their promulgation. The department shall promulgate these regulations for all community-based day programs by July 1, 1990.

(c) Upon the promulgation of regulations pursuant to subdivision (b), and pursuant to Section 4691.5, and by September 1 of each year thereafter, the department shall establish rates pursuant to the regulations. Rate increases during fiscal years 1990–91 and 1991–92 shall be limited to those specified in subdivision (b). For fiscal year 1992–93 and all succeeding fiscal years, any increases proposed during those years in the rates of reimbursement established pursuant to the regulations, except for rate increases due to rate appeals and rate adjustments based on unanticipated program changes, shall be subject to the appropriation of sufficient funds in the Budget Act, for those purposes, to fully provide the proposed increase to all eligible programs for the entire fiscal year. If the funds appropriated in the Budget Act are not sufficient to fully provide for the proposed increase in the rates of reimbursement for all eligible programs for the entire fiscal year, the proposed increase shall be limited to the level of funds appropriated. The increases proposed in the rates of reimbursement shall be reduced equitably among all eligible providers in accordance with funds appropriated and the eligible programs shall be reimbursed at the reduced amount for the entire fiscal year.

(d) Using the reported costs of day programs reimbursed at a permanent rate and the standards and ratesetting processes promulgated pursuant to subdivision (b) as a basis, the department shall report to the Legislature as follows:

(1) By April 15, 1993, and every odd year thereafter, the difference between permanent rates for existing programs and the rates of those programs based upon their allowable costs and client attendance, submitted pursuant to the regulations specified in subdivision (b). In reporting the difference, the department shall also identify the amount of the difference associated with programs whose rates are above the allowable range of rates, which is available for increasing the rates of programs whose rates are below the allowable range, to within the allowable range, and any other pertinent cost or rate information which the department deems necessary.

(2) By April 15, 1994, and every even year thereafter, the level of funding, if any, which was not appropriated to reimburse providers

at the proposed rates reported the prior fiscal year pursuant to paragraph (1), and any other pertinent cost or rate information which the department deems necessary.

(3) The April 15, 1996, report pursuant to paragraph (2) shall be prepared jointly by the department and organizations representing community-based day program providers, as determined by the department. That report shall also include a review of the ratesetting process and recommendations, if any, for its modification.

(e) Rates established by the department pursuant to subdivision (b) are exempt from the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The department shall ensure that the regional centers monitor compliance with program standards.

SEC. 4. Section 4691.5 is added to the Welfare and Institutions Code, to read:

4691.5. The ratesetting methodology, to be established pursuant to subparagraph (C) of paragraph (3) of subdivision (b) of Section 4691 shall include, but need not be limited to, all of the following:

(a) A process for establishing rates during fiscal year 1990–91 for new programs and existing progams receiving a provisional or permanent rate.

(1) The rate for new programs shall be the mean rate determined for the same type of day program and staff-to-client ratio. This rate shall be a temporary rate. Determination of the mean rate for new programs shall be based on the program, cost, and other information of existing programs receiving a permanent rate, using allowable costs and client attendance information of those existing programs. In order to establish rates pursuant to this paragraph existing programs receiving a permanent rate shall submit to the department, the program, cost, and other information specified by the department for either calendar year 1988 or fiscal year 1988–89. The specified information shall be submitted on forms developed by the department, not later than 45 days following receipt of the required forms from the department, after the effective date of this section. Programs which fail to submit the required information within the time specified shall have payment of their permanent rate suspended until the required information has been submitted.

(2) Except as provided in paragraph (4) the rate for existing programs receiving a provisional rate, whose rate would otherwise expire during fiscal year 1990–91, shall be extended at the provisional rate until September 1, 1991.

(3) Except as provided in paragraph (4) below, the rate for existing programs receiving a permanent rate shall be reestablished at the permanent rate until June 30, 1991.

(4) The rate for existing programs receiving a provisional or permanent rate as specified in paragraph (2) and paragraph (3) shall be increased for all programs eligible for the increase. Eligible programs shall include only those programs which received a

deficiency adjustment in their permanent or provisional rate for fiscal year 1989–90, based on calendar year 1988 program and cost information submitted to the department, pursuant to the stipulated order in the case of California Association of Rehabilition Facilities et al. v. State of California, Sacramento County Superior Court Case No 355326, and the adjustment was insufficient to fund the entire deficiency. The amount of funds available for the increase is limited to the one million dollars ($1,000,000) appropriated for that purpose for fiscal year 1990–91, and it shall be distributed proportionately among all eligible programs. The amount of increase which each eligible program shall receive toward its remaining deficiency, based on calendar year 1988 program and cost information, shall be equal to the percentage that one million dollars ($1,000,000) represents of the total deficiency, based on calendar year 1988 program and cost information, for all eligible programs.

(b) A process for establishing rates during fiscal year 1991–92 for new programs and existing programs receiving a temporary, provisional, or permanent rate.

(1) The rate for existing programs receiving a permanent rate, shall be determined based on fiscal year 1989–90 program, cost, and other information submitted to the department and regional center. The ratesetting process shall include, but shall not be limited to, all of the following:

(A) A process for determination of a mean rate and an allowable range of rates for the same type of day program and staff-to-client ratio. The mean rate shall be determined using those programs' allowable costs and client attendance and the allowable range of rates shall be defined as the rates of those programs included between the 10th and 90th percentiles.

(B) The rates for existing programs receiving a permanent rate shall be increased or decreased to their allowable costs for fiscal year 1991–92, as follows:

(i) The rate shall be decreased if the program's allowable costs and client attendance, for fiscal year 1989–90, determined pursuant to the regulations, would result in a rate that is lower than its existing permanent rate.

(ii) The rate shall be increased if the program's allowable costs and client attendance for fiscal year 1989–90, determined pursuant to the regulations, would result in a rate that is higher than its existing permanent rate and its existing permanent rate is below or within the allowable range of rates.

(iii) No rate increase shall be provided that would result in the rate exceeding the allowable range of rates. No increase shall be provided for programs whose existing permanent rate is above the allowable range of rates. The amount of funds appropriated for that purpose for fiscal year 1991–92 shall be distributed only to those programs eligible for the increase.

(C) A process for the reduction or increase in the rate of any program whose existing permanent rate is not within the allowable

range of rates. This process shall be based upon all of the following:

(i) For programs whose existing permanent rates are above the allowable range of rates, their existing permanent rate shall be reduced by 5 percent or to the allowable range, whichever is less.

(ii) For programs whose existing permanent rates are below the allowable range of rates, after the increase specified in clause (ii) of subparagraph (B) their rate shall be increased, up to the allowable range, in proportion to the amount of funds obtained from reducing the rate of programs whose rates are above the range.

(2) The rate for new programs shall be the mean rate determined pursuant to the process in paragraph (1) for the same type of day program and staff-to-client ratio using the program, cost, and other information submitted by providers receiving a permanent rate.

(3) The rate for existing programs receiving a provisional rate, whose rate expired during fiscal year 1990–91 and was extended until September 1, 1991, shall be determined pursuant to the process specified in paragraph (1) for permanent rates, except that the determination shall be based upon 12 consecutive months of representative costs incurred by the program during the period it was receiving its provisional rate. The program shall submit these costs and other program information, designated by the department, to the department within the time frames specified in the regulations. If the program has not incurred or cannot provide 12 consecutive months of representative costs, the department may determine the rate based on less than 12 consecutive months of representative costs.

(4) The rate for existing programs receiving a provisional rate, whose rate will expire in July or August of 1991, shall be extended until September 1, 1991, and then determined pursuant to the process specified in paragraph (3).

(c) A process for establishing rates during fiscal year 1992–93 for new programs and existing programs receiving a temporary or permanent rate:

(1) The rate for new programs shall be the mean rate, determined pursuant to the process in paragraph (2) of subdivision (b) for fiscal year 1991–92, for the same type of day program and staff-to-client ratio.

(2) The rate for existing programs receiving a temporary rate shall be continued at the rate established for fiscal year 1991–92, until the rate expires or a permanent rate is established pursuant to the process in paragraph (4) of subdivision (b) for fiscal year 1991–92.

(3) The rate for existing programs receiving a permanent rate shall be reestablished at the rate established for fiscal year 1991–92, except for programs whose rates are not within the allowable range of rates. For those programs whose rates are not within the allowable range, their rates shall be reduced or increased pursuant to the process in subparagraph (C) of paragraph (1) of subdivision (b) for fiscal year 1991–92.

(d) A process for establishing rates during fiscal year 1993–94 for

new programs and existing programs receiving a temporary or permanent rate:

(1) The rate for existing programs receiving a permanent rate shall be determined based on fiscal year 1991–92 program, cost, and other information submitted to the department and regional center. The ratesetting process shall include the process specified in paragraph (1) of subdivision (b) for fiscal year 1991–92, except that the allowable range of rates shall be determined by computing 50 percent of the mean rate for fiscal year 1993–94 and converting that amount into a range of rates, distributed equally above and below the mean. This process shall compare the range of rates computed for fiscal year 1993–94 with the range of rates calculated for fiscal year 1991–92 based on 80 percent of the programs, and shall use the lesser of the two ranges in the comparison as the allowable range of rates. Once established, this range shall be permanent.

(2) The rate for new programs shall be the mean rate determined pursuant to the process in paragraph (1) for the same type of day program and staff-to-client ratio using the program, cost, and other information submitted by providers receiving a permanent rate.

(3) The rate for existing programs receiving a temporary rate shall be continued at the established rate until the program has incurred 12 consecutive months of representative costs within the timeframes specified in the regulations. Once the representative costs have been incurred, the rate shall be determined pursuant to the process specified in paragraph (1) for permanent rates.

(e) A process for establishing rates, during fiscal year 1994–95 and each alternative fiscal year thereafter, for new programs and existing programs receiving a temporary or permanent rate. The process shall be the same as that specified in subdivision (c) for determining, continuing, and reestablishing rates, but shall be based on the program, cost, and other information submitted to the department and regional center for establishment of rates for fiscal year 1993–94 and each alternative fiscal year thereafter.

(f) A process for establishing rates, during fiscal year 1995–96 and each alternative fiscal year thereafter, for new programs and existing programs receiving a temporary or permanent rate. The process shall be the same as that specified in subdivision (d) except for the following:

(1) The rate for programs receiving a permanent rate shall be based on program, cost, and other information submitted to the department and regional center for fiscal year 1993–94 and each alternative fiscal year thereafter.

(2) The allowable range of rates, permanently established during fiscal year 1993–94, shall be applied to the mean rate determined for fiscal year 1995–96 and each alternative fiscal year thereafter.

(3) Existing programs receiving a permanent rate whose rates are not within the allowable range of rates shall, by September 1, 1995, have their rates reduced or increased as follows:

(A) For programs whose existing permanent rates are above the allowable range of rates, their rate shall be reduced to the allowable range.

(B) For programs whose existing rates are below the allowable range of rates, their rate shall be increased up to the allowable range in proportion to the amount of funds obtained from reducing the rate of programs whose rates are above the range.

(g) A process for establishing a uniform supplemental rate of reimbursement for programs serving nonambulatory clients, as determined by the department.

(h) A process for notifying the program of the established rate.

SEC. 5. The sum of one million one hundred thirty-one thousand dollars ($1,131,000) is hereby appropriated from the General Fund to the State Department of Developmental Services for the payment of rate increases made pursuant to paragraphs (1) and (2) of subdivision (b) of Section 4690.2 of the Welfare and Institutions Code. Of the total amount appropriated pursuant to this section, the amount used to fund the administrative portion of the rate increase shall not exceed three hundred thousand dollars ($300,000).

SEC. 6. (a) The sum of one million dollars ($1,000,000) is hereby appropriated from the General Fund to the State Department of Developmental Services for payment of rate increases made pursuant to paragraph (4) of subdivision (a) of Section 4691.5 of the Welfare and Institutions Code for eligible programs receiving a provisional or permanent rate for fiscal year 1990–91, which received a deficiency adjustment in their provisional rate or permanent rate, pursuant to the stipulated order in California Association of Rehabilitation Facilities et al. v. State of California, Sacramento County Superior Court Case No. 355326.

(b) It is the intent of the Legislature that an appropriation shall be made in the Budget Act of 1991–92 sufficient to fund rate increases made pursuant to Sections 4691 and 4691.5 of the Welfare and Institutions Code to cover the allowable costs for eligible programs receiving a permanent rate.

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 ensure that nonresidential programs receive equitable rates of reimbursement so that regional centers may purchase high quality services for people with developmental disabilities, it is necessary that this act take immediate effect.

CHAPTER 1397

An act to amend Sections 25280, 25281, 25281.5, 25283, 25284, 25286, 25287, 25288, 25289, 25291, 25292, 25293, 25295, 25298, 25299, 25299.1, 25299.2, 25299.3, 25299.4, and 25299.5 of, to add Sections 25280.5, 25292.1, 25292.2, and 25299.7 to, and to repeal Section 25299.6 of, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 25280 of the Health and Safety Code is amended to read:

25280. (a) The Legislature finds and declares as follows:

(1) Substances hazardous to the public health and safety and to the environment are stored prior to use or disposal in thousands of underground locations in the state.

(2) Underground tanks used for the storage of hazardous substances and wastes are potential sources of contamination of the ground and underlying aquifers, and may pose other dangers to public health and the environment.

(3) In several known cases, underground storage has resulted in undetected and uncontrolled releases of hazardous substances into the ground. These releases have contaminated public drinking water supplies and created a potential threat to the public health and to the waters of the state.

(4) The Legislature has previously enacted laws regulating the management of hazardous wastes, including statutes providing the means to clean up releases of hazardous substances into the environment when the public health, domestic livestock, wildlife, and the environment are endangered. Current laws do not specifically govern the construction, maintenance, testing, and use of underground tanks used for the storage of hazardous substances, or the short-term storage of hazardous wastes prior to disposal, for the purposes of protecting the public health and the environment.

(5) The protection of the public from releases of hazardous substances is an issue of statewide concern.

(b) The Legislature therefore declares that it is in the public interest to establish a continuing program for the purpose of preventing contamination from, and improper storage of, hazardous substances stored underground. It is the intent of the Legislature, in enacting this chapter, to establish orderly procedures that will ensure that newly constructed underground storage tanks meet appropriate standards and that existing tanks be properly maintained, inspected, tested, and upgraded so that the health, property, and resources of the people of the state will be protected.

SEC. 2. Section 25280.5 is added to the Health and Safety Code,

to read:

25280.5. The Legislature finds and declares all of the following:

(a) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(b) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this chapter, to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

SEC. 3. Section 25281 of the Health and Safety Code is amended to read.

25281. For purposes of this chapter, the following definitions apply:

(a) "Automatic line leak detector" means any method of leak detection, as determined in regulations adopted by the board, which alerts the owner or operator of an underground storage tank to the presence of a leak. "Automatic line leak detector" includes, but is not limited to, any device or mechanism which alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of hazardous substance through piping, or by triggering an audible or visual alarm, and which detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) "Board" means the State Water Resources Control Board. "Regional board" means a California regional water quality control board.

(c) "Department" means the State Department of Health Services.

(d) "Facility" means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(e) "Federal act" means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(f) "Hazardous substance" means both of the following.

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United State Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(g) "Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283.

(h) "Operator" means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(i) "Owner" means the owner of an underground storage tank.

(j) "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, or association. "Person" also includes any city, county, district, the state, any department or agency thereof, or the United States to the extent authorized by federal law.

(k) "Pipe" means any pipeline or system of pipelines which is used in connection with the storage of hazardous substances and which is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(*l*) "Primary containment" means the first level of containment, such as the portion of a tank which comes into immediate contact on its inner surface with the hazardous substance being contained.

(m) "Product-tight" means impervious to the substance which is contained, or is to be contained, so as to prevent the seepage of the substance from the primary containment. To be product-tight, the tank shall not be subject to physical or chemical deterioration by the substance which it contains over the useful life of the tank.

(n) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(o) "Secondary containment" means the level of containment external to, and separate from, the primary containment

(p) "Single-walled" means construction with walls made of only one thickness of material. For the purpose of this chapter, laminated, coated, or clad materials are considered single-walled.

(q) "Special inspector" means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(r) "Storage" or "store" means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for

a period of years. "Storage" or "store" does not mean the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(s) "SWEEPS" means the Statewide Environmental Evaluation and Planning System administered by the California Association of Environmental Health Administrators.

(t) "Tank" means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials (e.g. wood, concrete, steel, plastic) which provides structural support.

(u) "Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(v) "Tank tester" means an individual who performs tank integrity tests on underground storage tanks.

(w) "Unauthorized release" means any release of any hazardous substance which does not conform to this chapter, unless this release is authorized by the board or a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(x) "Underground storage tank" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of hazardous substances and which is substantially or totally beneath the surface of the ground. "Underground storage tank" does not include any of the following:

(1) A tank with a capacity of 1,100 gallons or less which is located on a farm and which stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(2) A tank which is located on a farm or at the residence of a person, which has a capacity of 1,100 gallons or less, and which stores home heating oil for consumptive use on the premises where stored.

(3) Structures such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. Sumps which are a part of a monitoring system required under Section 25291 or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this section. Structures identified in this paragraph may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(y) "Underground tank system" or "tank system" means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

SEC. 4. Section 25281.5 of the Health and Safety Code is amended to read:

25281.5 (a) Notwithstanding subdivision (k) of Section 25281,

for purposes of this chapter "pipe" means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to 49 Code of Federal Regulations, Part 195.

(2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles which are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (w) of Section 25281, "underground storage tank" does not include vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

SEC. 5. Section 25283 of the Health and Safety Code is amended to read:

25283. (a) Every county shall implement this chapter pursuant to the regulations adopted by the board. A city may, by ordinance, assume responsibility for the implementation of this chapter pursuant to the regulations adopted by the board and, if so, shall have exclusive jurisdiction within the boundary of the city for the purposes of carrying out this chapter. A city which, prior to January 1, 1990, was exempt from implementing this chapter, has the exclusive jurisdiction, within its boundaries, for the purpose of implementing this chapter.

(b) A city shall notify the county on or before July 1, 1990, of its intentions to assume responsibility for implementation of this chapter. For a city which assumes responsibility for implementation of this chapter after January 1, 1990, the county shall have until July 1, 1991, to transfer responsibility for the enforcement program to the city unless an earlier date is mutually agreed upon by the county and city. The ordinance adopted by the city shall comply with this chapter, applicable federal law, and regulations and guidelines adopted pursuant thereto. A county shall designate a department, office, or other agency of that county as the local agency responsible for administering and enforcing this chapter, and a city which assumes responsibility for implementing this chapter shall also make a similar designation. A city which assumes responsibility for implementation of this chapter pursuant to this paragraph shall designate the agency which has responsibility for implementing Chapter 6.95 (commencing with Section 25500) as the local agency responsible for administering and enforcing this chapter

(c) Revenue from fees collected by the county pursuant to this chapter shall be prorated between the city and county based upon when the city assumes responsibility for implementation of this chapter.

SEC. 6. Section 25284 of the Health and Safety Code is amended to read:

25284. (a) Except as provided in subdivisions (c) and (d), no person shall own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner.

(b) Each local agency shall prepare a form which provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner and is to be transferred the permit to operate the tank. That person shall complete the form accepting the obligations of the permit and submit the completed form to the local agency within 30 days after the ownership of the underground storage tank is to be transferred. A local agency may review and modify, or terminate, the transfer of the permit to operate the underground storage tank, pursuant to the criteria specified in subdivision (a) of Section 25295, upon receiving the completed form.

(c) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have 30 days after the date of assumption of ownership to apply for an operating permit pursuant to Section 25286 or, if accepting a transferred permit, shall submit to the local agency the completed form accepting the obligations of the transferred permit, as specified in subdivision (b). During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

(d) (1) Any person who owns an underground storage tank which was not subject to this chapter before January 1, 1990, may apply for a permit on or before January 30, 1990, to operate the underground storage tank pursuant to Section 25286. If an owner subject to this subdivision applies for a permit on or before January 30, 1990, the owner is not in violation of this section, unless the local agency notifies the owner in writing that the local agency will not issue the permit, or if the underground storage tank is operated without a permit after December 31, 1990.

(2) A permit issued pursuant to this subdivision for an underground storage tank installed on or before December 22, 1988, shall require compliance with Section 25292 and a permit issued pursuant to this subdivision for an underground storage tank installed after December 22, 1988, shall require compliance with Section 25291. A permit issued pursuant to this subdivision may include a schedule of compliance, when necessary, to allow a reasonable opportunity to comply with any applicable requirements of this chapter or the regulations adopted by the board implementing this chapter, if the permit requires compliance with

requirements which are no less stringent than any federal, state, or local requirements which apply to the underground storage tank on January 1, 1990.

(e) A permit issued pursuant to this section shall apply and require compliance with all applicable regulations adopted by the board pursuant to Section 25299.3.

(f) When, in its judgment, it is appropriate to do so, the local agency may issue a single permit to a person for a facility.

SEC. 7. Section 25286 of the Health and Safety Code is amended to read:

25286. (a) An application for a permit to operate an underground storage tank, or for renewal of the permit, shall be made, by the owner, on a standardized form prepared by the board and provided by the local agency and shall be accompanied by the appropriate fee, as specified in Section 25287. As a condition of any permit to operate an underground storage tank, the permittee shall notify the local agency, within the period determined by the local agency, of any changes in the usage of the underground storage tank, including the storage of new hazardous substances, changes in monitoring procedures, and if there has been any unauthorized release from the underground storage tank, as specified in Section 25294 or 25295.

(b) (1) The local agencies shall provide the California Association of Environmental Health Administrators with copies of the completed permit applications, using an industry standard computer readable magnetic tape, or any other format acceptable to the board.

(2) The board shall enter into a contract with the California Association of Environmental Health Administrators for the SWEEPS, and reimburse the association, upon appropriation by the Legislature, for any costs determined by the board to have been necessary and incurred pursuant to this section, including programming, training, maintenance, actual data processing expenditures, and any incidental costs of the operation of the SWEEPS related to the permitting of underground storage tanks. The permit application information required in subdivision (c) shall be stored in the SWEEPS. The California Association of Environmental Health Administrators shall submit to the board a quarterly report, including any information required by the board concerning permit application data. Each local agency shall provide the California Association of Environmental Health Administrators with a copy of the completed permit application within 30 days after taking final action on the application.

(c) The application form shall include, but not be limited to, requests for the following information:

(1) A description of the age, size, type, location, uses, and construction of the underground storage tank or tanks.

(2) A list of all the hazardous substances which are or will be stored in the underground storage tank or tanks, specifying the hazardous substances for each underground storage tank.

(3) A description of the monitoring program for the underground tank system.

(4) The name and address of the person, firm, or corporation which owns the underground tank system and, if different, the name and address of the person who operates the underground tank system.

(5) The address of the facility at which the underground tank system is located.

(6) The name of the person making the application.

(7) The name and 24-hour phone number of the contact person in the event of an emergency involving the facility.

(8) If the owner or operator of the underground storage tank is a public agency, the application shall include the name of the supervisor of the division, section, or office which operates the tank.

(d) If a permittee stores in an underground storage tank or tanks a hazardous substance which is not listed in the application, as required by paragraph (2) of subdivision (c), the permittee shall apply for a new or amended permit within 30 days after commencing the storage of that hazardous substance.

SEC. 8. Section 25287 of the Health and Safety Code is amended to read:

25287 (a) Except as provided in subdivision (c), a fee shall be paid to the local agency by each person who submits an application for a permit to operate an underground storage tank or to renew or amend a permit. The governing body of the county, or a city which assumes enforcement jurisdiction, shall establish the amount of the fees at a level sufficient to pay the necessary and reasonable costs incurred by the local agency in administering this chapter, including, but not limited to, permitting and inspection responsibilities. The governing body may provide for the waiver of fees when a state or local government agency makes an application for a permit to operate or an application to renew a permit.

(b) This fee shall include a surcharge, the amount of which shall be determined by the Legislature annually to cover the costs of the board in carrying out its responsibilities under this chapter and the costs of the local agency in collecting the surcharges. The local agency may retain 6 percent of any surcharge collected for costs incurred in its collection. The 6 percent of the surcharge retained by the local agency is the local agency's sole source of reimbursement for the cost of collecting the surcharge. The local agency shall transmit all remaining surcharge revenue collected by the local agency to the board within 45 days after receipt pursuant to subdivision (a). The surcharge shall be deposited in the Underground Storage Tank Fund hereby created in the General Fund. The money in this account is available, upon appropriation by the Legislature, to the board for the purposes of implementing this chapter.

(c) A local agency may waive the fee required by subdivision (a) for an underground storage tank which has a capacity of 5,000 gallons

or less, which is located on a farm, and which contains motor vehicle or heating fuel used primarily for agricultural purposes, if the local agency finds that the fee will impose undue economic hardship upon the person applying for the permit. However, the local agency shall not waive the surcharge required under subdivision (b).

(d) If a local agency does not transmit the surcharge for a particular permit application to the board, the local agency shall pay the California Association of Environmental Health Administrators for any costs associated with processing that application incurred by the SWEEPS.

(e) A county of the fifth class, as defined in Section 28020 of the Government Code as a county with a population of 1,000,000 and under 1,070,000, and any city located within that county, is exempt from the requirements of collecting or transmitting to the board the surcharge required to be included in fees paid to a local agency pursuant to this section.

SEC. 9. Section 25288 of the Health and Safety Code is amended to read:

25288. (a) The local agency shall inspect every underground tank system within its jurisdiction at least once every three years. The purpose of the inspection is to determine whether the tank system complies with the applicable requirements of this chapter and the regulations adopted by the board pursuant to Section 25299 3, including the design and construction standards of Section 25291 or 25292, whichever is applicable, whether the operator has monitored and tested the tank system as required by the permit, and whether the tank system is in a safe operating condition. After an inspection, the local agency shall prepare a compliance report detailing the inspection and shall send a copy of this report to the permitholder.

(b) In addition to, or instead of, the inspections specified in subdivision (a), the local agency may require the permitholder to employ, periodically, special inspectors to conduct an audit or assessment of the permitholder's underground tank system to determine whether the tank system complies with the factors specified in subdivision (a) and to prepare a special inspection report with recommendations concerning the safe storage of hazardous materials at the tank system. The report shall contain recommendations consistent with this chapter, where appropriate. A copy of the report shall be filed with the local agency at the same time the inspector submits the report to the permitholder. Within 30 days after receiving this report, the permitholder shall file with the local agency a plan to implement all recommendations contained in the report or shall demonstrate, to the satisfaction of the local agency, why these recommendations should not be implemented.

SEC. 10. Section 25289 of the Health and Safety Code is amended to read:

25289. (a) In order to carry out the purposes of this chapter, any duly authorized representative of the local agency, the regional

board, or the board has the authority specified in Section 25185, with respect to any place where underground tank systems are located, or in which records relevant to operation of an underground tank system are kept, and in Section 25185.5, with respect to real property which is within 2,000 feet of any place where underground tank systems are located. The authority conferred by this subdivision includes the authority to conduct any monitoring or testing of an underground tank system.

(b) In order to carry out the purposes of this chapter, any authorized representative of the local agency, the regional board, or the board may require the owner or operator of an underground storage tank to, upon request, submit any information relevant to the compliance with this chapter or the regulations, to conduct monitoring or testing, and to report the results of that monitoring or testing under penalty of perjury. The burden of the monitoring, testing, and reporting, including costs, shall bear a reasonable relationship to the need for the monitoring, testing, and reporting.

SEC. 11. Section 25291 of the Health and Safety Code is amended to read:

25291. Every underground storage tank installed after January 1, 1984, shall meet all of the following requirements:

(a) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product-tight.

(2) Secondary containment shall be constructed to prevent structural weakening as a result of contact with any released hazardous substances, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(4) In the case of multiple primary tanks, the secondary container shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(5) If the facility is open to rainfall, then the secondary containment shall be able to additionally accommodate the maximum volume of a 24-hour rainfall as determined by a 25-year storm history.

(6) Single-walled containers do not fulfill the requirement of an underground storage tank providing both a primary and a secondary containment. However, an underground storage tank with a primary container constructed with a double complete shell shall be deemed to have met the requirements for primary and secondary containment set forth in this section if the outer shell is constructed primarily of nonearthen materials, including, but not limited to,

concrete, steel, and plastic, which provide structural support and a continuous leak detection system with alarm is located in the space between the shells; the system is capable of detecting the entry of hazardous substances from the inner container into the space; and the system is capable of detecting water intrusion into the space from the outer shell.

(7) The design and construction of underground storage tanks for motor vehicle fuels storage need not meet the requirements of paragraphs (1) to (6), inclusive, if all of the following conditions exist:

(A) The primary containment construction is of glass fiber reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic.

(B) Any alternative primary containment is installed in conjunction with a system that will intercept and direct a leak from any part of the underground storage tank to a monitoring well to detect any release of motor vehicle fuels stored in the tank.

(C) The system is designed to provide early leak detection and response, and to protect the groundwater from releases.

(D) The monitoring is in accordance with the alternative method identified in paragraph (4) of subdivision (b) of Section 25292.

(E) Pressurized piping systems connected to tanks used for the storage of motor vehicle fuels and monitored in accordance with paragraph (4) of subdivision (b) of Section 25292 also meet the conditions of this subdivision if the tank meets the conditions of subparagraphs (A) to (D), inclusive. However, any pipe connected to an underground storage tank installed after July 1, 1987, shall be equipped with secondary containment which complies with paragraphs (1) to (6), inclusive.

(b) The underground tank system shall be designed and constructed with a monitoring system capable of detecting the entry of the hazardous substance stored in the primary containment into the secondary containment.

(c) The underground storage tank shall be provided with equipment to prevent spills and overflows from the primary tank.

(d) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(e) If water could enter into the secondary containment by precipitation or infiltration, the facility shall contain a means of monitoring for water intrusion and for removing the water by the owner or operator. This removal system shall also prevent uncontrolled removal of this water and provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.

(f) Underground pressurized piping that conveys a hazardous

substance shall be equipped with an automatic line leak detector and shall be tightness tested annually.

(g) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing for requirements for underground storage systems specified in Section 2-7 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association, (NFPA 30) as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(h) Before the underground storage tank is placed in service, the underground tank system shall be tested in operating condition using a tank integrity test.

(i) If the underground storage tank is designed to maintain a water level in the secondary containment, the tank shall be equipped with a safe method of removing any excess water to a holding facility and the owner or operator shall inspect the holding facility monthly for the presence of excess water overflow. If excess water is present in the holding facility, the permitholder shall provide a means to analyze the water for hazardous substance contamination and a means to dispose of the water, if so contaminated, at an authorized disposal facility.

SEC. 12. Section 25292 of the Health and Safety Code is amended to read:

25292. For every underground storage tank installed on or before January 1, 1984, and used for the storage of hazardous substances, the following actions shall be taken:

(a) On or before July 1, 1985, the owner shall outfit the underground tank system with a monitoring system capable of detecting unauthorized releases of any hazardous substances stored in the tank system, and thereafter, the operator shall monitor each tank system, based on materials stored and the type of monitoring installed.

(b) Provide a means for visual inspection of the tank system, wherever practical, for the purpose of the monitoring required by subdivision (a). Alternative methods of monitoring the tank system on a monthly, or more frequent basis, may be required by the local agency, consistent with the regulations of the board.

The alternative monitoring methods include, but are not limited to, the following methods:

(1) Tank integrity testing for proving the integrity of an underground tank system at time intervals specified by the board.

(2) A groundwater monitoring well or wells which are downgradient and adjacent to the underground tank system, vapor analysis within a well where appropriate, and analysis of soil borings at the time of initial installation of the well.

(3) A continuous leak detection and alarm system which is located in monitoring wells adjacent to an underground tank system and which is approved by the local agency.

(4) For monitoring tanks containing motor vehicle fuels, daily gauging and inventory reconciliation by the operator, if all of the

following requirements are met:

(A) Inventory records are kept on file for one year and are reviewed quarterly.

(B) The tank system is tested, using the tank integrity test at time intervals specified by the board and whenever there is a shortage greater than the amount which the board shall specify by regulation.

(C) If a pressurized pump system is connected to the tank system, the system has a leak detection device to monitor for leaks in the piping. The leak detection device shall be installed in a manner designed to resist unauthorized tampering and to clearly show by visual inspection if tampering has occurred. The leak detection device shall be tested annually, at a minimum, and all devices found to be not performing in conformance with the manufacturer's leak detection specifications shall be promptly repaired or replaced.

(5) For monitoring underground tank systems which are located on farms and which store motor vehicle or heating fuels used primarily for agricultural purposes, alternative monitoring methods include the following:

(A) If the tank has a capacity of greater than 1,100 gallons but of 5,000 gallons or less, the tank shall be tested using the tank integrity test, at least once every three years, and the owner shall utilize tank gauging on a monthly or more frequent basis, as required by the local agency, subject to the specifications provided in paragraph (7) of subdivision (c) of Section 2641 of Title 23 of the California Code of Regulations, as that section read on August 13, 1985.

(B) If the tank has a capacity of more than 5,000 gallons, the tank shall be monitored pursuant to the methods for all other tanks specified in this subdivision.

(c) The board shall develop regulations specifying monitoring alternatives. The local agency, or any other public agency specified by the local agency, shall approve the location and number of wells, the depth of wells, and the sampling frequency, pursuant to these regulations.

(d) On or before December 22, 1998, the underground storage tank shall be replaced or upgraded to prevent releases due to corrosion or spills or overfills for the underground storage tanks's operating life.

(e) (1) All existing underground pressurized piping shall be equipped with an automatic line leak detector on or before December 22, 1990, and shall be retrofitted with secondary containment on or before December 22, 1998. Underground pressurized piping shall be tightness tested annually.

(2) Paragraph (1) does not apply to existing pressurized piping containing motor vehicle fuel, if the pipeline is constructed of glass fiber reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic, is equipped with an automatic line leak detector, and is tightness tested annually.

SEC. 13. Section 25292.1 is added to the Health and Safety Code, to read:

25292.1. All underground tank systems shall meet the following operational requirements:

(a) The underground tank system shall be operated to prevent unauthorized releases, including spills and overfills, during the operating life of the tank.

(b) Where equipped with cathodic protection, the underground tank system shall be operated by a person with sufficient training and experience in preventing corrosion.

(c) The underground tank system shall be structurally sound at the time of upgrade or repair.

SEC. 14. Section 25292.2 is added to the Health and Safety Code, to read:

25292.2. (a) All owners and operators of an underground tank system shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from the underground tank system, in accordance with regulations adopted by the board pursuant to Section 25299.3. The regulations shall include a schedule that requires that financial responsibility requirements are phased-in for all underground storage tank systems on or before October 26, 1990.

(b) If the owner and the operator are separate persons, either the owner or the operator shall demonstrate compliance with subdivision (a).

(c) An owner may comply with this article by entering into an agreement with the operator of the tank requiring the operator to demonstrate compliance with subdivision (a). However, both the owner and the operator are in violation of subdivision (a) if evidence of financial responsibility is not established and maintained in accordance with this article.

SEC. 15. Section 25293 of the Health and Safety Code is amended to read:

25293. (a) The operator of the underground tank system shall monitor the tank system using the method specified on the permit for the tank system. Records of monitoring, testing, repairing, and closure shall be kept in sufficient detail to enable the local agency to determine whether the underground tank system is in compliance with the applicable provisions of this chapter, the regulations adopted by the board pursuant to Section 25299.3, and the permit issued for the operation of the tank system.

(b) If the operator is not the owner, the owner shall provide a copy of the permit to the operator, enter into a written contract with the operator which requires the operator to monitor the tank system as set forth in the permit, and provide the operator with a copy of Section 25299, or a summary of this section, in the form which the board specifies by regulation. The owner shall notify the local agency of any change of operator.

SEC. 16. Section 25295 of the Health and Safety Code is amended to read:

25295. (a) (1) Any unauthorized release which escapes from the secondary containment, or from the primary containment, if no secondary containment exists, increases the hazard of fire or explosion, or causes any deterioration of the secondary containment of the underground tank system shall be reported by the operator to the local agency within 24 hours after the release has been detected or should have been detected. A full written report shall be transmitted by the owner or operator of the underground tank system within five working days of the occurrence of the release. The report shall describe the nature and volume of the unauthorized release, any corrective or remedial actions undertaken, and any further corrective or remedial actions, including investigative actions, which will be needed to clean up the unauthorized release and abate the effects of the release and a time schedule for implementing these actions.

(2) The local agency shall review the permit whenever there has been an unauthorized release or when it determines that the underground tank system is unsafe. In determining whether to modify or terminate the permit, the local agency shall consider the age of the tank, the methods of containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the hazardous substances stored in the tank, the severity of potential unauthorized releases, and the suitability of any other long-term preventive measures which would meet the requirements of this chapter.

(b) In cooperation with the Office of Emergency Services, the board shall submit an annual statewide report by county, to the Legislature, of all unauthorized releases, indicating for each unauthorized release the operator, the hazardous substance, the quantity of the unauthorized release, and the actions taken to abate the problem.

(c) The reporting requirements imposed by this section are in addition to any requirements which may be imposed by Sections 13271 and 13272 of the Water Code.

SEC. 17. Section 25298 of the Health and Safety Code is amended to read:

25298. (a) No person shall abandon an underground tank system or close or temporarily cease operating an underground tank system, except as provided in this section.

(b) An underground tank system which is temporarily taken out of service, but which the operator intends to return to use, shall continue to be subject to all the permit, inspection, and monitoring requirements of this chapter and all applicable regulations adopted by the board pursuant to Section 25299.3, unless the operator complies with subdivision (c) for the period of time the underground tank system is not in use.

(c) No person shall close an underground tank system unless the person undertakes all of the following actions:

(1) Demonstrates to the local agency that all residual amounts of

the hazardous substance or hazardous substances which were stored in the tank system prior to its closure have been removed, properly disposed of, and neutralized.

(2) Adequately seals the tank system to minimize any threat to the public safety and the possibility of water intrusion into, or runoff from, the tank system.

(3) Provides for, and carries out, the maintenance of the tank system as the local agency determines is necessary for the period of time the local agency requires.

(4) Demonstrates to the appropriate agency, which has jurisdiction over the site, that the site has been investigated to determine if there are any present, or were past, releases, and if so, that appropriate corrective or remedial actions have been taken.

SEC. 18. Section 25299 of the Health and Safety Code, as amended by Section 2 of Chapter 296 of the Statutes of 1988, is amended to read:

25299. (a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each underground storage tank for each day of violation for any of the following violations:

(1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.

(2) Violation of any of the requirements of the permit issued for the operation of the underground tank system.

(3) Failure to maintain records, as required by this chapter.

(4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.

(5) Failure to properly close an underground tank system, as required by Section 25298.

(6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

(1) Failure to obtain a permit as specified by this chapter.

(2) Failure to repair or upgrade an underground tank system in accordance with the provisions of this chapter.

(3) Abandonment or improper closure of any underground tank system subject to this chapter.

(4) Knowing failure to take reasonable and necessary steps to assure compliance with this chapter by the operator of an

underground tank system.

(5) Violation of any applicable requirement of the permit issued for operation of the underground tank system.

(6) Violation of any applicable requirement of this chapter or any applicable regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is liable for a civil penalty of not more than five thousand dollars ($5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(e) Any person subject to Section 25293.1 who fails to transmit the information as required by Section 25293.1 shall be liable for a civil penalty of not more than one thousand dollars ($1,000).

(f) In determining both the civil and criminal penalties imposed pursuant to this section, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(g) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, and shall be paid to the treasury of the local agency or state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action. All penalties or fines collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

(h) In addition to the state and any city or county implementing this chapter pursuant to Section 25283, a city or county specified in subdivision (a) of Section 25299.1 may also levy and collect penalties under this section.

(i) 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. 19. Section 25299 of the Health and Safety Code, as added by Section 3 of Chapter 296 of the Statutes of 1988, is amended to read:

25299. (a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each underground storage tank for each day of violation for any of the following violations:

(1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.

(2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.

(3) Failure to maintain records, as required by this chapter.

(4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.

(5) Failure to properly close an underground tank system, as required by Section 25298.

(6) Violation of any applicable requirement of this chapter or any requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

(1) Failure to obtain a permit as specified by this chapter.

(2) Failure to repair or upgrade an underground tank system in accordance with this chapter.

(3) Abandonment or improper closure of any underground tank system subject to this chapter.

(4) Knowing failure to take reasonable and necessary steps to assure compliance with this chapter by the operator of an underground tank system.

(5) Violation of any applicable requirement of the permit issued for operation of the underground tank system.

(6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or

required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is liable for a civil penalty of not more than five thousand dollars ($5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(e) In determining both the civil and criminal penalties imposed pursuant to this section, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(f) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, and shall be paid to the treasury of the local agency or state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action. All penalties or fines collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

(g) This section shall become operative on January 1, 1991.

SEC. 20. Section 25299.1 of the Health and Safety Code is amended to read:

25299.1. (a) Any city or county which prior to January 1, 1984, adopted an ordinance which, at a minimum met the requirements set forth in Sections 25284 and 25284.1, as they read on January 1, 1984, prior to being amended and renumbered, providing for double containment, and monitoring of underground storage tanks which was exempt from this chapter as of December 31, 1989, is not exempt from implementing this chapter and shall implement this chapter on or before January 1, 1991.

(b) Until a city or county specified in subdivision (a) implements this chapter, the city or the county shall, at a minimum, do all of the following:

(1) Submit to the board the application form and annual information specified by Section 25286 and submit a written report of any unauthorized release from an underground storage tank to the

Office of Emergency Services within 10 working days from the time the local agency is notified of the unauthorized release.

(2) Collect and transmit to the board the surcharge specified in subdivision (b) of Section 25287.

(3) Issue permits for the operation of an underground storage tank, which, at a minimum, ensure compliance with any applicable requirement of the federal act and any applicable regulation adopted by the board pursuant to Section 25299.3 which the board determines is necessary to assure consistency with the federal act.

(c) A permit issued on or after January 1, 1991, by a city or county specified in subdivision (a) shall require compliance with all applicable requirements of this chapter and with the regulations adopted by the board pursuant to Section 25299.3.

(d) This chapter does not limit or abridge the authority of any city or county to adopt an ordinance requiring information, conducting investigations, inspections, or implementing and enforcing this chapter.

SEC. 21. Section 25299.2 of the Health and Safety Code is amended to read:

25299.2. (a) Except as provided in subdivision (b) of Section 25299.4, this chapter does not preclude or deny the right of a local agency to adopt and enforce any regulation, requirement, or standard of performance that is more stringent than a regulation, requirement, or standard of performance in effect under this chapter with respect to underground storage tanks, if the regulation, requirement, or standard of performance, as provided in this subdivision, is consistent with this chapter.

(b) This chapter shall not be construed to preclude or deny the right of a local agency to regulate tanks which are not subject to regulation under this chapter or the federal act.

SEC. 22. Section 25299.3 of the Health and Safety Code is amended to read:

25299.3. (a) The board shall adopt regulations implementing this chapter.

(b) Until the board adopts regulations, any city or county may implement Section 25291 with regard to permits. Any tank or facility so permitted shall be deemed to be in compliance with the regulations of the board implementing that section. Any underground storage tank installed within a city or county which has not implemented Section 25291 prior to the adoption of regulations by the board shall be subject to the same requirements of this chapter as an underground storage tank installed prior to January 1, 1984.

(c) Every city and county shall, without undue delay, undertake its regulatory responsibilities under this chapter after the board adopts its regulations pursuant to subdivision (a). Except as provided in Section 25299.1, every city and county shall implement this chapter not later than July 1, 1985.

(d) Any regulation adopted by the board pursuant to this section

shall assure consistency with the requirements for state programs implementing the federal act, and shall include any more stringent requirements necessary to implement this chapter.

SEC. 23. Section 25299.4 of the Health and Safety Code is amended to read:

25299.4. (a) Any permitholder or permit applicant may apply to the board for a categorical variance from Section 25291 or 25292. A categorical variance is an alternative procedure which would be applicable to more than one local agency jurisdiction.

(1) The application shall include a description of the proposed alternative program, method, device, or process and a description of the region, area, or circumstances under which the variance would apply.

(2) The board shall give notice to all affected cities, counties, and city and counties.

(3) The board shall issue a categorical variance from these sections if it determines, after investigation and at least two public hearings held in different areas of the state, as selected by the board, that the applicant has demonstrated by clear and convincing evidence that the proposed alternative will adequately protect the soil and the beneficial uses of water of the state from an unauthorized release. Any variance so issued shall prescribe the conditions the applicant is required to maintain and shall describe the alternative.

(4) The board shall modify or revoke a categorical variance upon a finding that the proposed alternative does not adequately protect the soil and the beneficial uses of water of the state from an unauthorized release.

(5) The board may remand the application to the appropriate regional board if it determines that the application falls within subdivision (c).

(6) The board may charge and collect from the applicant a fee sufficient to recover the reasonable costs of proceeding under this section.

(b) (1) After January 1, 1984, any local agency may apply to the board for authority to implement design and construction standards for the containment of a hazardous substance in underground storage tanks which are in addition to those set forth in this chapter. The application shall include a description of the additional standards and a discussion of the need to implement them. The board shall approve the application if it finds, after an investigation and public hearing, that the local agency has demonstrated by clear and convincing evidence that the additional standards are necessary to adequately protect the soil and the beneficial uses of the waters of the state from unauthorized releases.

(2) The board shall make its determination within six months of the date of application for authority to implement additional standards. If the board's determination upholds the application for authority to implement additional standards, the standards shall be effective as of the date of the determination. If the board's

determination does not uphold the application, the additional standards shall not go into effect.

(c) (1) Any permitholder or permit applicant may apply to the regional board having jurisdiction over the location of the permitholder or applicant's facility for a site-specific variance from Section 25291 or 25292. A site-specific variance is an alternative procedure which is applicable in one local agency jurisdiction. Prior to applying to the regional board, the permitholder shall first contact the local agency pursuant to paragraph (5).

(2) The regional board shall hold a public hearing 60 days after the completion of any documents required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The regional board shall consider the local agency's and the city, county, or city and county's recommendations in rendering its decision. Failure of the local agency or city, county, or city and county to join in the variance application pursuant to paragraph (5) shall not affect the request of the applicant to proceed with the variance application.

(4) The regional board shall approve the variance if it finds, after investigation and public hearing, that the applicant has demonstrated by clear and convincing evidence either of the following:

(A) Because of the facility's special circumstances, not generally applicable to other facilities' property, including size, shape, design, topography, location, or surroundings, the strict application of Sections 25291 and 25292 is unnecessary to adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

(B) Strict application of the standards of Sections 25291 and 25292 would create practical difficulties not generally applicable to other facilities or property and that the proposed alternative will adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

(5) Before applying for a variance, the applicant shall contact the local agency to determine if a site-specific variance is required. If the local agency determines that a site-specific variance is required or does not act within 60 days, the applicant may proceed with the variance procedure in subdivision (a).

(6) At least 30 days before applying to the appropriate regional board, the applicant shall notify and request the city, county, or city and county to join the applicant in the variance application before the regional board.

(A) The city, county, or city and county shall provide notice of the receipt of that request to any person who has requested the notice.

(B) The local agency within the city, county, or city and county which has the jurisdiction for land use decisions shall have 30 days from completion of any documents required by the California Environmental Quality Act (Division 13 (commencing with Section

21000) of the Public Resources Code) to act on the applicant's request to join the applicant.

(d) Applicants requesting a variance pursuant to this section shall pay a fee determined by the board to be necessary to recover the reasonable cost of administering this section.

(e) The permit issued for any underground storage tank issued a variance pursuant to this section shall require compliance with any conditions prescribed by the board or a regional board in issuing the variance. The conditions prescribed by the board or regional board in the permit shall include any conditions necessary to assure compliance with any applicable requirements of the federal act.

(f) This section does not apply to or within any city or county which was exempt from implementing this chapter as of December 31, 1984.

SEC. 24. Section 25299.5 of the Health and Safety Code is amended to read:

25299.5. (a) This chapter shall be construed to assure consistency with the requirements for state programs implementing the federal act.

(b) This chapter shall not be construed to limit or abridge the powers and duties granted to the department by Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) or to the board and each regional board by Division 7 (commencing with Section 13000) of the Water Code.

SEC. 25. Section 25299.6 of the Health and Safety Code is repealed.

SEC. 26. Section 25299.7 is added to the Health and Safety Code, to read:

25299.7 (a) The board is designated as the lead agency in the state for all purposes stated in the federal act and may exercise any powers which a state may exercise pursuant to the federal act.

(b) The board may prepare, as part of any program application submitted to the Environmental Protection Agency for state program approval pursuant to Section 6991c of Title 42 of the United States Code, any procedures and implementation plans necessary to assure compliance with the requirements for a state program implementing the federal act. These procedures and implementation plans may include, but are not limited to, procedures or implementation plans with respect to investigation, compliance monitoring, enforcement, public participation, and sharing of information among local agencies, the board, and the Environmental Protection Agency. If the Environmental Protection Agency approves of the state program, the board, the regional boards, and each local agency shall administer this chapter in accordance with these procedures and implementation plans where required by the memorandum of agreement executed by the board and the Environmental Protection Agency. These procedures and implementation plans shall also apply to any public agency or official who brings a civil enforcement action pursuant to this chapter, and

to any city or county specified in Section 25299.1, to the extent required by the memorandum of agreement. The board's approval of the program application and memorandum of agreement is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The board shall adopt any regulations necessary to obtain state program approval pursuant to Section 6991c of Title 42 of the United States Code. The board shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulations adopted by the board pursuant to this section shall be filed with, but may not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the board.

SEC. 27. The amendments made to Section 25287 of the Health and Safety Code by this act do not constitute a special statute in violation of Section 16 of Article IV of the California Constitution, since Santa Clara County, which is the county of the fifth class, is the first county in the state to adopt its own regulation of underground storage tanks, upon which the state program is modeled, and that county does not benefit from the state program.

SEC. 28. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because 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, or because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1398

An act to amend Section 1367.6 of the Health and Safety Code, to amend Sections 10123.8 and 11512.15 of the Insurance Code, and to amend Section 14132.6 of the Welfare and Institutions Code, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1367.6 of the Health and Safety Code is amended to read:

1367.6. Every health care service plan contract which provides for the surgical procedure known as a mastectomy and which is issued, amended, delivered or renewed in this state on or after July 1, 1980, shall include coverage for prosthetic devices or reconstructive surgery incident to the mastectomy, providing that the mastectomy is performed after July 1, 1980. Coverage for prosthetic devices and reconstructive surgery shall be subject to the deductible and coinsurance conditions applied to the mastectomy and all other terms and conditions applicable to other benefits. As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons, as determined by a licensed physician and surgeon.

Any provision in any contract issued, amended, delivered or renewed in this state on or after July 1, 1980, which is in conflict with this section shall be of no force or effect.

As used in this section, "prosthetic devices" means and includes the provision of initial and subsequent prosthetic devices pursuant to an order of the patient's physician.

SEC. 2. Section 10123.8 of the Insurance Code is amended to read:

10123.8. Every group policy of disability insurance or self-insured employee welfare benefit plan which provides for the surgical procedure known as a mastectomy and which is issued, amended, delivered or renewed in this state on or after July 1, 1980, shall include coverage for prosthetic devices or reconstructive surgery incident to the mastectomy, providing that the mastectomy is performed after July 1, 1980. Coverage for prosthetic devices and reconstructive surgery shall be subject to the deductible and coinsurance conditions applied to the mastectomy, and all other terms and conditions applicable to other benefits. As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons, as determined by a licensed physician and surgeon.

Any provision in any contract issued, amended, delivered or

renewed in this state on or after July 1, 1980, which is in conflict with this section shall be of no force or effect.

As used in this section, "prosthetic devices" means and includes the provision of initial and subsequent prosthetic devices pursuant to an order of the patient's physician.

SEC. 3. Section 11512.15 of the Insurance Code is amended to read:

11512.15. On or after January 1, 1989, every individual or group nonprofit hospital service plan 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 11512.10 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 an individual or group policy to cover the surgical procedure known as mastectomy or to prevent application of deductible or copayment provisions contained in the policy or plan, nor shall this section be construed to require that coverage under an individual or group policy be extended to any other procedures.

As used in this section, "prosthetic devices" means and includes the provision of initial and subsequent prosthetic devices pursuant to an order of the patient's physician.

SEC. 4. Section 14132.6 of the Welfare and Institutions Code is amended to read:

14132.6. External prostheses constructed of silicon or other comparable materials, prosthetic implants, and reconstructive surgery incident to mastectomy shall be deemed medically necessary and shall be covered under this chapter. As used in this section, "mastectomy" means the removal of all or part of the breast for medically necessary reasons, as determined by a licensed physician and surgeon.

Coverage under this section shall include the provision of initial and subsequent prosthetic devices pursuant to an order of the patient's physician.

SEC. 5. The changes made by this act do not constitute a change in, but clarify, the existing law.

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:

It is necessary that this act go into immediate effect in order that persons entitled to health coverage under this act may receive the protection of this act without delay.

CHAPTER 1399

An act to repeal and add Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code, relating to small business.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code is repealed.

SEC. 2. Part 5 (commencing with Section 14000) is added to Division 3 of Title 1 of the Corporations Code, to read:

CHAPTER 1. SMALL BUSINESS DEVELOPMENT CORPORATIONS

Article 1. Introduction

14000. This chapter shall be known and may be cited as the "Small Business Corporation Law."

14001. The Legislature finds that:

(a) Unemployment in California is a matter of statewide concern requiring concerted public and private action to develop employment opportunities for the disadvantaged, youth, and unemployed persons.

(b) It is necessary to direct additional capital, general management assistance, business education, and other resources to encourage the development of small business opportunities, particularly for minority, women, and disabled persons, to alleviate unemployment.

14002. It is the intention of the Legislature in enacting this part to promote the economic development of small businesses by making available capital, general management assistance, and other resources, including loan services, personnel, and business education to small business entrepreneurs for the purpose of promoting the health, safety, and social welfare of the citizens of California, to eliminate unemployment of the economically disadvantaged of the state, and to stimulate economic development, employment, minority group, women, and disabled persons entrepreneurship. It is the further intent of the Legislature to provide a flexible means to mobilize and commit all available and potential resources in the various regions of the state to fulfill these objectives. It is the further intent of the Legislature that corporations operating pursuant to this law, shall to the maximum extent feasible, coordinate with other job and business development efforts within their region directed toward implementing the purpose of this part.

14003. If any provision of this chapter or the application thereof

to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Article 2. Definitions

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 banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, and savings and loan associations.

(c) "Financial company" means banking organizations including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.

(d) "Expansion Fund" means the Small Business Expansion Fund.

(e) "Corporate Fund" means the Small Business Development Corporation Loan Guarantee Fund.

(f) "Loan Account" means the Small Business Development Loan Guarantee Account.

(g) (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, including those businesses organized for agricultural purposes that 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.

(h) "Employment incentive loan" means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(i) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on loan application pursuant to Section 14060.

(j) "Board of directors" means the board of directors of the corporation

(k) "OSB" and "office" means the Office of Small Business.

(*l*) "Board" means the Small Business Development Board.

(m) "Department" means the Department of Commerce.

(n) "Executive director" means the Executive Director of the

Office of Small Business.

(o) "Director" means the Director of Commerce.

Article 3. Small Business Development Board

14020. There is in the department a Small Business Development Board.

14021. The board consists of the following membership:

(a) The Superintendent of Banks or his or her designee.

(b) The Director of Commerce of his or her designee.

(c) The Director of the Department of Food and Agriculture or his or her designee.

(d) The Director of the Employment Development Department or his or her designee.

(e) The President of the State Assistance Fund for Energy, California Business and Industrial Development Corporation (SAFE BIDCO) shall serve as an ex officio nonvoting member.

(f) The Director of the California Export Finance Office, California State World Trade Commission shall serve as an ex officio nonvoting member.

(g) The Chief of the Office of Small and Minority Business, Department of General Services shall serve as an ex officio nonvoting member.

(h) The California Small Business Advocate shall serve as an ex officio nonvoting member.

(i) The Chairperson of the Coalition of California Small Business Development Centers shall serve as an ex officio nonvoting member.

(j) Thirteen members appointed by the Governor, including:

(1) Two persons residing in economically disadvantaged areas who are actively engaged in providing leadership and assistance for persons residing in these areas; one each from an urban and rural area.

(2) Two persons to be recommended by the financial institutions participating in the program as of January 1 of each year.

(3) Two persons actively engaged in a commercial, agricultural, or industrial business and who are members of a small, agricultural, minority or women's business association.

(4) One person who is an officer of an urban labor organization.

(5) One person experienced in financial matters or actively engaged in the banking, savings and loan, or insurance business.

(k) Two Members of the Legislature or their designees, one of whom shall be appointed by the Speaker of the Assembly, and one by the Senate Rules Committee, shall advise with the board insofar as it does not conflict with the duties of the legislators. For purposes of this part, the two Members of the Legislature shall constitute a joint interim legislative committee on the subject of this part and shall have all the powers and duties imposed upon such committees by the Joint Rules of the Senate and the Assembly.

(*l*) Four persons actively involved in the business or agricultural

community, two of whom shall be appointed by the Speaker of the Assembly, and two by the Senate Rules Committee, each to removal at the pleasure of the appointing authority.

(m) One person from each small business development corporation, who shall be selected by the board of directors or members of each corporation in accordance with its bylaws, each of whom shall serve as a nonvoting member of the board.

(n) The Chairperson of the Development Board shall be designated by the Governor from the members he or she appoints.

14022. The board shall do each of the following:

(a) Advise the executive director on matters regarding this part.

(b) Adopt regulations for the purposes of this part, as proposed by the executive director, including regulations for the supervision and suspension of the corporations created herein.

(c) Select a vice chairperson of the board and adopt bylaws as are required to govern the conduct and operation of the board.

(d) Approve new corporations recommended by the executive director, based on an examination of each of the following:

(1) Review of the articles of incorporation to determine whether they contain the provisions required by this chapter and conform with the regulations adopted pursuant to this part.

(2) Determination as to whether the legislative intent expressed in Section 14002 shall be served by the proposed corporation.

(3) Determination as to whether the responsibility, character, and general fitness of the incorporators and directors named in the articles are such as to command the confidence of the state and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that they include representatives of the financial and business community, as well as the economically disadvantaged.

(e) Approve the yearly contracts between the corporations and OSB.

(f) Recommend to the executive director the appointment of such advisory groups as may be necessary to carry out the powers and duties of the department.

(g) Hold public hearings in order to carry out the objectives of the department in regards to its responsibilities as legislative advocate and ombudsman for the state's small business community.

(h) Solicit nominees and recommend to the Governor candidates for the position of executive director.

(i) Advise the Governor, the executive director, and the Small Business Advocate, regarding issues and programs affecting California's small business community, including, but not limited to, business innovation and expansion, export financing, state procurement, management and technical assistance, venture capital, and financial assistance.

14023. The public members of the board may, at the discretion of the department, be reimbursed per diem and travel expenses

pursuant to state law.

14024. 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. This section applies to any direct loan program administered by the office.

Article 4. Executive Director

14025. The executive director, as provided for in Section 15335.07 of the Government Code, shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purposes of making this program accessible to all areas of the state.

(c) After consideration by the board, expeditiously approve or disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation of a corporation.

(d) Require each corporation to submit an annual written plan of operation in the form and containing the information as the board may require by regulation or otherwise.

(e) Review reports from the State Banking Department and inform corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

14026. The executive director, following notification to the director, may do all of the following:

(a) Upon approval by the board, contract for services entered into pursuant to this chapter.

(b) Hold public hearings.

(c) Act as liaison between corporations formed under this part, other state and federal agencies, lenders, and the Legislature.

(d) Process and tabulate on a monthly basis all corporate reports.

(e) Attend monthly board meetings.

(f) Attend and participate at corporation meetings. The executive director, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation.

(g) Assist corporations in applying for federal grant applications, and in obtaining program support from the business community.

14027. The executive director shall have the accounts of each corporation formed under this part audited as of the close of business on June 30, of each year. The executive director shall also have the portfolio of each corporation audited a minimum of once a year. Material audit exceptions which are not corrected by the corporation within a reasonable period of time may result in the suspension of the corporation.

14028. If the executive director determines that the corporation is not meeting the criteria, rules and regulations adopted pursuant to this part, its written proposed plan of operation submitted under subdivision (d) of Section 14025, or the purposes expressed in Section 14002, the executive director may take action to suspend the corporate powers. With the approval of the board, the executive director may withdraw state funds allocated to a corporate fund which are not encumbered or obligated by outstanding guarantees, and the state funds may be allocated to other corporate funds.

If the executive director gives notices of the withdrawal of state funds, and the corporation does not return these funds within 15 days after the notice, the corporate powers, rights, and privileges of the corporation shall be suspended. The suspension shall in no way impair the effectiveness of any outstanding loan or guarantee.

State funds shall include those funds allocated to corporate funds and the return from investment of those funds whether retained in a trust account or paid out to and retained unexpended by the corporation.

The executive director shall transmit the name of the corporation to be suspended to the Secretary of State, and the suspension shall thereupon become effective upon the issuance of a certification of the Secretary of State which shall be prima facie evidence of suspension.

14029. Any corporation which has suffered the suspension may be relieved therefrom upon making an application therefor in writing to the board indicating the corrective actions taken to bring a corporation into conformity and upon return of the state funds and payment of interest, and upon the issuance of a certificate of revivor by the Secretary of State upon the request of the board.

Article 5. Funds

14030. There is hereby created in the State Treasury the Small Business Expansion Fund.

14031. The expansion fund is created solely for the purpose of receiving state money to make loans, guarantees, and restricted investments pursuant to this article.

14032. All money deposited in the expansion fund is hereby continuously appropriated, without regard to fiscal years. for the purposes of this article.

14033. The state shall not be liable or obligated in any way beyond the state money which is allocated in the expansion fund from moneys from the General Fund moneys appropriated for such purposes.

14034. The executive director at his or her discretion, with the approval of the Director of Finance, may request the Treasurer to invest those funds in the expansion fund and the corporate fund which are not immediately encumbered by administrative or program costs, in securities issued by the Treasury of the United States government. Returns from these investments shall be deposited in the expansion fund and shall be used to support the programs of this part.

14035. There is hereby continued in the State Treasury in the expansion fund, the Small Business Development Loan Guarantee Account as part of the expansion fund.

14036. The loan account is created solely for the purpose of receiving state, federal, or local government money, and other public or private money, for subsequent allocation by the office, with the approval of the Department of Finance, to a corporate fund formed pursuant to Section 14040.

14037. All money deposited in the loan account is hereby appropriated, without regard to fiscal years for the purposes of this chapter. The state shall not be liable or obligated in any way beyond the state money which is allocated and deposited in the loan account from state money which is appropriated for these purposes.

14038. The funds in the loan account shall be paid out to a small business development corporation loan guarantee fund by the Treasurer on warrants drawn by the Controller and requisitioned by the office, pursuant to the purposes of this chapter. The office may transfer funds allocated to the corporate fund to accounts, established solely to receive the funds, in lending institutions designated by that corporation. The lending institutions so designated shall be approved by the state for the receipt of state deposits. Interest earned on the accounts in lending institutions may be utilized by the corporations pursuant to the purposes of this chapter.

14039. Pursuant to this section and the regulations, the state has residual interest in the funds deposited by the state to a corporate fund and to the return on these funds from investments. On dissolution of the corporation or if the executive director believes these funds are in jeopardy or are not being effectively utilized, these funds may be withdrawn by the executive director from the trust if they are not encumbered by guarantees, and returned to the expansion fund or transferred to another corporate fund. This provision shall be contained in the trust instructions to the trustee.

14040. Every corporation formed under this chapter may establish a corporate fund pursuant to regulations adopted by the board. This fund shall not be subject to any state regulation other than by the board and Department of Finance. Each corporate fund

is a legally separate fund, and the assets of one fund shall not be used to satisfy loan guarantees or other obligations of another corporation. No corporation shall use corporate funds to secure a corporate indebtedness. Corporate funds are state funds and, with exception of guarantees established pursuant to this chapter, shall not be subject to liens or encumbrances of the corporation or its creditors.

14041. (a) Except as provided in subdivision (d) of Section 14070 and Sections 14093 and 14082, the purpose of a corporate fund shall be to make and guarantee loans, approved by the corporation, which meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a corporate 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 inoperative on July 1, 1991, and, as of January 1, 1992, is repealed.

14041. (a) Except as provided in subdivision (d) of Section 14070, and Section 14093, the purpose of a corporate fund shall be to guarantee loans, approved by the corporation, which meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a corporate 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, 1991.

14042. Every corporation formed under this chapter may establish an account within the corporate fund to receive funds appropriated to the expansion fund in the State Treasury. The executive director shall determine the allocation from the expansion fund to the corporate fund.

14043. The corporation shall not deposit any of its funds in any financial institution unless the financial institution has been designated as a depository by a vote of the majority of all of the directors of the corporation, exclusive of any director who is an officer or director of the institution so designated. The financial institution which is to act as trustee of the corporate fund shall be designated after review by the board and a vote of the majority of all the corporations. The corporation shall not receive money on deposit.

Article 6. New Corporations

14045. The articles of incorporation shall set forth:

(a) The name of the corporation, which shall include the words "small business development corporation," except for those corporations formed pursuant to this part prior to 1985, which may also be called "rural or urban development corporations."

(b) The purposes for which the corporation is formed, which shall be those specified in Section 14002. This requirement shall not be deemed to preclude a statement of powers.

(c) A geographical description of the corporation's service area.

(d) The name and addresses of seven or more persons who are to act in the capacity of directors until the selection of their successors.

(e) That the corporation is organized pursuant to the California Small Business Development Corporation Law.

14046. If the board recommends acceptance upon the basis of the facts disclosed by the investigation provided by subdivision (d) of Section 14022 and finds that the proposed incorporation meets all the requirements of this chapter, the executive director shall approve the articles of incorporation and endorse the approval thereon and forward the same to the Secretary of State for his or her approval and filing. Likewise, the board shall recommend approval or disapproval of all amendments to the articles. The executive director shall endorse the approval on the amendatory document before the document is forwarded to the Secretary of State for his or her approval and filing.

14047. The corporation's existence begins upon the filing of the articles with the Secretary of State and continues perpetually, unless otherwise expressly provided for by law.

14048. Every corporation shall adopt bylaws, which shall include provisions governing the election and qualification of directors; the establishment and functions of loan committees of the corporation; and the method of selecting the representative of the corporation on the board.

The bylaws shall provide for removal of officers only by a two-thirds vote of the directors of the corporation.

14049. Each corporation shall have provisions establishing a grievance procedure for employees, clients, or potential clients, to appeal a decision or obtain redress of an action done by the staff or loan committee of the corporation. The procedures shall be established in writing during the probationary period of a new corporation.

14050. The board may authorize the establishment of a new corporation. To qualify for consideration as a corporation, an organization must have had a minimum of two years' experience in small business finance assistance. These qualifications may be waived by the board and the executive director in areas of high unemployment if the proposed corporation is newly established and the incorporators have small business finance and assistance

experience.

14051. The Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of this title) applies to corporations formed under this chapter, except as to matters otherwise provided for in this chapter.

14052. For six months following the establishment of a corporation, commencing upon filing of the articles of incorporation with the Secretary of State, a corporation shall be on probation. While on probation, the following limitations shall apply:

(a) The corporation shall not establish a corporate account. The corporation may receive authorization from the executive director to guarantee a specific amount of funds in the expansion fund.

(b) The corporation shall be suspended upon 10 days' written notice by the executive director. This suspension is nonappealable and not subject to the procedures for suspension applicable to a corporation not on probation.

Article 7. Corporation Board and Loan Committee

14055. The corporate powers of a corporation shall be exercised by the board of directors.

14056. (a) No person shall serve on a board of directors who is not a resident of or person conducting business in the service area described in the articles of incorporation.

(b) Each board of directors shall include representatives from all of the following:

(1) The financial community.

(2) The business community.

(3) The economically disadvantaged.

14057. If any director ceases to meet the qualifications established in Section 14056, he or she shall immediately vacate his or her position as a director and such position shall be deemed vacant.

14058. If any vacancy occurs in the elective membership of the board of directors through death, resignation, or otherwise, the remaining directors shall elect a person representing the appropriate category to fill the vacancy for the unexpired term.

14059. Acting as the sole authority in the granting of loans or guarantees, the corporation's board of directors, upon a recommendation from the corporation's loan committee:

(a) Shall emphasize consideration to applications that will increase employment of disadvantaged, disabled, or unemployed persons, or increase employment of youth residing in areas of high youth unemployment and high youth delinquency.

(b) Shall not grant a loan or guarantee unless it determines that the conditions of Section 14071 are satisfied.

14060. (a) Every corporation shall establish one or more loan committees, each of which shall be composed of five or more persons, a majority of whom shall be experienced in banking and

lending operations.

(b) A loan committee shall review applications to the corporation for a loan or guarantee and shall do each of the following:

(1) Determine the feasibility of the proposed transaction. The loan committee shall recommend approval of the application only upon a determination that there is a reasonable chance that the loan will be repaid.

(2) On the basis of that determination, recommend to the board of directors any action that the loan committee deems appropriate under the circumstances.

(c) A loan committee shall expeditiously act to accept or reject loan applications.

Article 8. Corporations, Miscellaneous

14061. Every corporation shall provide for and maintain a central staff to perform all administrative requirements of the corporation including all those functions required of a corporation by the board and the executive director.

14062. Costs incurred by a corporation in the creation and maintenance of a central staff shall be paid to the corporation from state funds allocated to the office during the first four years of operation for these purposes Reasonable costs incurred following the initial four years of operation shall be paid from the return on corporate funds.

14063. Funds allocated to a corporation and the return on investment of those funds remain state funds and the corporation's use of those funds is conditional pursuant to this section and Section 14039. Each corporation shall enter into a written signed agreement with the state at the beginning of each fiscal year pursuant to this subdivision. In the event the state and the corporation do not reach an 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 issuance of guarantees, by incurring expenses against the fund and its return or in any manner whatsoever, and the state may take action under this section and Section 14039 or other action as appropriate. Any guarantee or other encumbrance made by the corporation in violation of this section shall be null and void, and neither the state nor the corporate fund shall be liable therefor absent ratification by the board and the executive director.

14064. The state, through the Office of Small Business, shall continue to have jurisdiction and to exercise supervision over 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 corporations to ensure conformity with the provisions and intent of the Small Business Corporation Law, the regulations thereof, and credit

guidelines established by the executive director. The use of state funds paid out to the corporate fund and the return on those funds from investment pursuant to Section 14038 is conditional pursuant to Section 14028 and 14039. 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 14028 and 14039 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 corporate fund or the return of 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 14028 and 14039 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 corporate fund will be liable therefor.

14065. The corporations shall report to the executive director, or his or her designated representative, all statistical and other reports required by this part, responses to audit reports, budget requirements, invoices submitted for payment by the state, and information concerning loans made or guaranteed.

14066. The corporation shall make a report to the board, as of the close of business on June 30, of each year describing the corporation's activities and any additional information requested by the executive director, on or before August 1 of each year.

14067. The office may establish a program through which the corporations may assist small farms and rural and agricultural-related businesses with respect to financing and other assistance.

14068. To implement its responsibilities, the corporation shall undertake a program which shall include, but not be limited to, the following:

(a) Develop and implement a program of outreach to low-resource businesses. The corporations located in rural areas shall give priority to low-resource farmers, rural, and agriculturally related businesses.

(b) Work with other organizations and lenders to locate, identify, and assist those unable to obtain credit through conventional sources because of reasons such as low equity, inadequate collateral, unacceptable legal structure (such as a co-op or nonprofit organization), management inadequacies, and language problems.

(c) To the extent possible, bring all possible financial resources (low-interest lenders, BIDCOs, MESBICs, other guarantors, etc.) to bear on borrower's problems.

(d) Provide assistance to businesses receiving loans of guarantees which will maximize the probability of loan repayment.

(e) Develop and implement a program for increasing program resources through private sector involvement and nonstate funds.

(f) Develop a program for collecting and liquidating defaulted loans so that the corporations can qualify to become full-service lenders under the Small Business Administration. Corporations located in rural areas shall, in addition, try to qualify for lender status under Farmers Home Administration.

(g) Develop a program which shall enable the corporations to be independent of state General Fund allocations for administrative support within four years.

(h) Become an agent for other lenders and guarantors.

14069. In all their state-funded programs, the corporations shall, to the extent practicable, be complementary to, and not competitive with, commercial lenders and other state and federal programs.

Article 9. Loans and Loan Guarantees

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund established pursuant to Section 14040.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the executive director with the approval of the board. The guarantee percentage rate shall be set by the executive director upon approval of the board.

(c) The corporation shall guarantee loans wherever possible. However, earnings from the trust funds may be used for direct lending provided that corporate direct loan funds do not constitute more than one-third of the loan.

Any corporation located in a rural area that is making a direct loan to a farmer or farm corporation is exempt from the one-third limitation and may use trust funds from both the income and trust account, provided that the direct loan is guaranteed or that at least 50 percent of the direct loan portfolio is guaranteed by a governmental agency, excluding any state government agency. The total trust funds committed by a corporation shall not exceed 50 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 corporation located in a rural area 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 corporation 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, and funds repaid by the borrower and ineligible for reborrowing shall not be considered in determining the maximum drawings of trust funds by a corporation. Any direct loan made by a corporation 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.

(d) In furtherance of the purposes of this part, up to one-half of the corporate 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) As a method of implementing the direct loan programs established in this chapter, the Office of Small Business may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the Office of Small Business to the corporation shall be up to the amount of and on terms similar to the loan between the corporation and the borrower. The loan between the Office of Small Business and the corporation shall be evidenced by a credit agreement secured by assignment of any note, executed in favor of the corporation by the borrower to the Office of Small Business. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the Office of Small Business is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the Office of Small Business if the corporation has exhausted a loan loss reserve established expressly for this purpose. Interest and principal received by the Office of Small Business from the corporation shall be deposited in the small business development corporation loan guarantee account of that corporation.

14071. In furtherance of the purposes set forth in Section 14002, a corporation may lend money to, and guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or assist financially, any person, firm, corporation, or association, and may establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith, except that the corporation shall not make or guarantee any loan unless and until it determines:

(a) There is no probability that the loan or other financial assistance would be granted by a financial company under reasonable terms or conditions, and the borrower has demonstrated a reasonable prospect of repayment of the loan.

(b) The loan proceeds shall be used exclusively in this state.

(c) The loan qualifies as a small business loan or an employment incentive loan.

(d) That the borrower has a minimum equity interest in the business as determined by the board.

(e) As a result of the loan, the jobs generated or retained

demonstrate reasonable conformance to the regulations specifying employment criteria.

14072. A corporation may charge the borrower or financial institution a loan 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.

14073 Corporations may grant energy efficiency improvement loans.

14074. The department shall enter into an agreement with the California Energy Extension Service of the Office of Planning and Research to assist small business owners in reducing their energy costs through low interest loans and by providing assistance and information through small business development corporations.

Article 10. Product Development

14076. The following definitions apply to this article:

(a) "Financial aid" means the infusion of risk capital to small businesses for use in the development and exploitation of specific inventions and products.

(b) "Invention" means any new process or new technique without regard to whether a patent has or could be granted.

(c) "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.

(d) "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.

14077. The office, in its discretion and after the approval of the board, may establish a program through which corporations may assist California small businesses by making available financial aid for the development phase of the 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. Products 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.

The executive director may appoint a technology marketing advisory committee to review product development applications being considered for funding by corporations. The advisory committee shall include, among others, a product development specialist, a marketing specialist, and a venture capitalist.

14078. In accordance with subdivision (a) of Section 14026, the executive director may provide technical assistance and staff support for the technology marketing advisory committee created pursuant to Section 14077 and the corporations implementing that section.

14079. 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 14077.

14080. If the office establishes the program authorized by Section 14077, return on investments authorized by Section 14077 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 after notification of the board. 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.

14081. If the office establishes the program authorized by Section 14077, the corporations shall charge an application fee in an amount to be determined from time to time by the executive director upon approval by the board.

14082. If the office establishes the program authorized by Section 14077, the corporations are authorized to use up to one-tenth of the amount within their corporate funds to make investments in California small businesses for product development as specified in Sections 14077 and 14080. The investments in each business shall not exceed the amount of the current loan guarantee limits established by regulation. This section is an exception to Section 14041.

14083. If the office establishes the program authorized by Section 14077, revenues derived from royalties on product investments shall be returned to the investing corporation's corporate fund.

This article 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.

Article 11. Conflict of Interest

14085. It shall be unlawful for the executive director or any person who is an officer, director, or employee of a corporation, or who is a member of a loan committee, or who is a member of the board or employee of the office:

(a) Ask for, consent, or agree to receive, any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage, for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation, any loan, guarantee, financial, or other assistance from any corporation.

(b) Borrow money, property, or to benefit knowingly, directly or indirectly, from the use of the money, credit, or property of any corporation.

(c) Make, maintain, or attempt to make or maintain, a deposit of the funds of a corporation with any other corporation or association on condition, or with the understanding, expressed or implied, that the corporation or association receiving such deposit shall pay any money or make a loan or advance, directly or indirectly, to any person, partnership, joint venture, association, or corporation, other than to a corporation formed under this part.

14086. It shall be unlawful for the executive director or any member of a corporation, or any person who is an officer or director, or who is a member or employee of the office or the board or executive director, to purchase or receive, or to be otherwise interested in the purchase or receipt, directly or indirectly, of any asset of a corporation, without paying to the corporation the fair market value of the asset at the time of the transaction.

14087. Violation of any provision of this article shall constitute a felony.

Article 12. Other Programs

14090. (a) Corporations shall give high priority to the issuance of loan guarantees to small business incubators, and to businesses which lease space in incubators provided that the businesses qualify under subdivision (h) of Section 7082 of the Government Code, and provided that the incubator headquarters are located within enterprise zones as defined in subdivision (d) of Section 7073 of the Government Code or within economic incentive areas designated under any other provision of law.

(b) For the purposes of this section, "incubator" means a facility that allows new small businesses to increase their probability of success by sharing needed capital equipment, services, and facilities, which may include, but are not limited to, the following:

(1) Reception and meeting area.

(2) Secretarial services (i.e., collating, telephone answering, mailhandling).

(3) Accounting and bookkeeping services.

(4) Research libraries.

(5) Onsite financial and management counseling.

(6) Parking.

(7) Flexible lease arrangements for flexible space.

(8) Computer/word processing facilities.

(9) Day care facilities.

(10) Office furniture rentals.

(11) A graduation policy sometimes requiring firms to leave after three to five years in a subsidized, nurturing environment.

(12) Employee training and placement services.

14091 If a firm has received a Phase 1 or Phase 2 Small Business

Innovation Research (SBIR) grant awarded by a federal agency. Corporations shall give high priority to marketing their services to SBIR recipients and providing loan guarantees whenever possible.

14092. With the approval of the executive director, a corporation may establish a profitmaking subsidiary for the specific purpose of sponsoring a small business investment company regulated by the Small Business Administration.

14093. A corporation, acting as a sponsor and with the approval of the executive director under Section 14092, is authorized to establish a small business investment company (including minority enterprise small business investment companies and business and industrial development companies).

Article 13. Hazardous Waste Reduction

14095. For purposes of this article, "generator" means a borrower pursuant to this article or a party which produces hazardous waste and applies for financial assistance pursuant to this article to reduce hazardous waste as generated.

14096. There is hereby created in the State Treasury as part of the California Economic Development Grant and Loan Fund created pursuant to Section 15327 of the Government Code, the Hazardous Waste Reduction Loan Account, for the sole purpose of receiving state, federal, or local government money, and other public or private money for expenditure by the Department of Commerce for the purposes of this article. The funds deposited in the Hazardous Waste Reduction Loan Account are hereby continuously appropriated to the Department of Commerce, notwithstanding Section 13340 of the Government Code. The state is not liable or obligated beyond the state money which is allocated and deposited in the Hazardous Waste Reduction Loan Account and is appropriated for these purposes.

14097. (a) The money in the Hazardous Waste Reduction Loan Account shall be expended by the Department of Commerce to make loans to generators for equipment, projects, or facilities to be used for the reduction of hazardous waste generated.

(b) The Department of Commerce may enter into a contract with a corporation to provide services pursuant to this article and may expend the funds in the Hazardous Waste Reduction Loan Account resulting from interest accruing from interest payments on loans made pursuant to this article or from the interest earned by the Hazardous Waste Reduction Loan Account to compensate a corporation for these services.

(c) The Department of Commerce may expend an amount of not more than one hundred thirty thousand dollars ($130,000) in any fiscal year for administrative expenses in carrying out this article, from the funds in the Hazardous Waste Reduction Loan Account derived from interest accruing from interest payments by the borrower or interest earned in the account.

(d) The Department of Commerce may also transfer an amount not to exceed two hundred thousand dollars ($200,000) from the Hazardous Waste Reduction Loan Account to a subaccount from which the department may pay for collection costs in connection with defaulted loans, including costs reasonably incurred to prevent a default.

14098. The State Department of Health Services shall, before a loan commitment is issued, approve the project to be funded.

14099. The State Department of Health Services and the Department of Commerce shall publicize and promote the availability of loan assistance pursuant to this article.

14100. The Department of Commerce may expend an amount up to, but not greater than, thirty thousand dollars ($30,000) from the earnings of the Hazardous Waste Reduction Loan Account for allocation to the board to adopt regulations to implement the direct lending authorized by this article. The board shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, including Section 13349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed within 180 days after their effective date unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code pursuant to subdivision (e) of Section 13346.1 of the Government Code.

14101. This article shall remain in effect 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.

CHAPTER 1400

An act to amend Sections 1501 and 7860 of, and to add Sections 1501.5, 2762.6, and 8305.10 to, the Fish and Game Code, relating to wildlife, making an appropriation therefor, and declaring the urgency thereof to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1501 of the Fish and Game Code is amended to read:

1501. The department may expend such funds as may be necessary for the improvement of property, including nonnavigable

lakes and streams, riparian zones, and upland, in order to restore, rehabilitate, and improve fish and wildlife habitat. The improvement activities may include, but are not limited to, the removal of barriers to migration of fish and wildlife and the improvement of hatching, feeding, resting, and breeding places for wildlife.

The department may undertake the services and habitat improvement work on private, public, and public trust lands without the state acquiring an interest in the property.

SEC. 2. Section 1501.5 is added to the Fish and Game Code, to read:

1501.5. (a) The department may enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities whenever the department finds that the contracts will assist in meeting the department's duty to preserve, protect, and restore fish and wildlife.

(b) Contracts authorized under this section are contracts for services and are governed by Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. No work under this section is public work or a public improvement, and is not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(c) This section does not apply to contracts for the following:

(1) Construction of office, storage, garage, or maintenance buildings.

(2) Drilling wells and installation of pumping equipment.

(3) Construction of permanent hatchery facilities, including raceways, water systems, and bird exclosures.

(4) Construction of permanent surfaced roadways and bridges.

(5) Any project requiring engineered design or certification by a registered engineer.

(6) Any contract that exceeds fifty thousand dollars ($50,000) in cost for fish and wildlife habitat preservation, restoration, and enhancement for the following:

(A) Fish screens, weirs, and ladders.

(B) Drainage or other watershed improvements.

(C) Gravel and rock removal or placement.

(D) Irrigation and water distribution systems.

(E) Earthwork and grading.

(F) Fencing.

(G) Planting trees or other habitat vegetation.

SEC. 3. Section 7860 of the Fish and Game Code is amended to read:

7860. (a) Except as provided in subdivision (f) or (g), no person who is 16 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) or (g), 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 16 years of age or 70 years of age or more 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.

(g) Persons who are exempt from the license requirements, or who are not required to be licensed, pursuant to Section 7850, are exempt from the requirements of this section.

SEC. 4. Section 2762.6 is added to the Fish and Game Code, to read:

2762.6. The department shall, after consultation with the

Advisory Committee on Salmon and Steelhead Trout, allocate that amount of moneys appropriated to the department from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund which the department determines to be necessary to pay the costs for the advisory committee.

SEC. 5. Section 8305.10 is added to the Fish and Game Code, to read:

8305.10. (a) Except as provided in subdivision (b) or (c), no abalone shall be possessed aboard or landed from any commercial fishing vessel or possessed by a commercial fisherman in any fish and game district, or portion thereof, in which the commercial taking of abalone is prohibited or the season for the commercial taking of abalone is closed.

(b) Subdivision (a) does not apply to abalone purchased in a processed form for consumption by the crewmembers of a commercial fishing vessel aboard the vessel if proof of that purchase is available on the vessel.

(c) Subdivision (a) does not apply to a commercial fishing vessel while on a sportfishing trip. Subdivision (a) does not apply to a commercial fisherman who is taking abalone for sport purposes if the commercial fisherman does not possess more than the limit of abalone established for sport purposes. The possession of more abalone than authorized for sport purposes by a commercial fisherman is prima facie evidence that the abalone are possessed for commercial purposes.

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

SEC. 7. The sum of two hundred twenty-eight thousand five hundred dollars ($228,500) is hereby appropriated to the Department of Fish and Game for allocation, as follows:

(a) To provide three personnel years for the wild trout program, as follows:

(1) One hundred twenty thousand dollars ($120,000) from the Federal Trust Fund from federal Dingell-Johnson/Wallop-Breaux moneys deposited in that federal fund which is usable for the purposes of the wild trout program.

(2) Forty thousand dollars ($40,000) from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund for the purpose of funding the one-quarter matching fund requirements of the federal allocation for the purposes of the wild trout program.

(b) Sixty-eight thousand five hundred dollars ($68,500), or as

much thereof as the department determines is necessary, from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund for allocation to pay the costs of the Advisory Committee on Salmon and Steelhead Trout to advise the department on programs to protect, restore, enhance, or maintain salmon and steelhead trout.

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:

There is an urgent need to improve the described property as provided by this act and to ensure adequate funding for the Advisory Committee on Salmon and Steelhead Trout and the critical wild trout program of the Department of Fish and Game in order for the public to realize the increased sport and commercial fishing opportunities to be made available from these activities, and to reduce the unlawful taking of abalone for commercial purposes in areas closed to that taking as soon as possible. It is, therefore, necessary that this act take effect immediately.

CHAPTER 1401

An act to amend Sections 8516, 8517, 8538, 8551.5, 8556, 8560, 8561, 8562, 8563, 8564, 8564.5, and 8565.5 of, and to add Sections 8510, 8516.2, and 8572 to, and to repeal and add Section 8516.1 of, the Business and Professions Code, relating to structural pest control.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Section 8510 is added to the Business and Professions Code, to read:

8510. For purposes of this chapter, "wood preservative" means any coating formulated to protect wood surfaces from deterioration caused by insects, fungus, rot, and decay and which contains a wood preservative chemical that is registered with the California Department of Food and Agriculture and the United States Environmental Protection Agency.

SEC. 1.1. Section 8516 of the Business and Professions Code is amended to read:

8516. (a) This section, and Section 8519, apply only to wood destroying pests or organisms, but do not apply to work conducted under a Branch 4 license.

(b) No registered company or licensee shall commence work on a contract, or sign, issue or deliver any documents expressing an opinion or statement relating to the absence or presence of wood

destroying pests or organisms until an inspection has been made. The registered company shall retain for three years all field reports from which a verbal or written estimate of or solutions for work are made. A written inspection report conforming to this section and on a form prescribed by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent. A copy of each report shall be filed with the board at the time the report is delivered or not later than five working days after the date the inspection is made. The report shall be delivered to the person requesting the inspection, or to the person's designated agent, before work is commenced. The following shall be set forth in the report:

(1) The date of the inspection and the name of the licensee making the inspection.

(2) The name and address of the person or firm ordering the report.

(3) The name and address of any person who is a party in interest to whom the board is to send certified copies of inspection reports and completion notices as provided in subdivision (h).

(4) The address or location of the property.

(5) A general description of the building or premises inspected.

(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions which would ordinarily subject those parts to attack by wood destroying pests or organisms exist.

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions and insufficient ventilation are to be reported.

(8) Indication or description of any areas normally subject to damage which are inaccessible or for other reason not inspected, with suggestion for further inspection if practicable. If, after the report has been made in compliance with this section, authority is given later to open inaccessible areas, a supplementary report on conditions in these areas shall be made.

(9) Recommendations for corrective measures.

(10) Information regarding the pesticide or pesticides to be used for their control as set forth in subdivision (a) of Section 8538.

(11) The inspection report shall clearly disclose that if requested by the person ordering the original report, a reinspection of the structure will be performed if an estimate or bid for making repairs was given with the original inspection report, or thereafter.

An estimate or bid for repairs shall be given separately allocating the costs to perform each and every recommendation for corrective measures as specified in subdivision (c) with the original inspection

report if the person who ordered the original inspection report so requests, and if the registered company is regularly in the business of performing corrective measures.

If no estimate or bid was given with the original inspection report, or thereafter, then the registered company shall not be required to perform a reinspection.

A reinspection shall be an inspection of those items previously listed on an original report to determine if the recommendations have been completed. Each reinspection shall be reported on an original inspection report form and shall be labeled "Reinspection" in capital letters by rubber stamp or typewritten. Each reinspection shall also identify the original report by date and stamp numbers.

After four months from an original inspection, all inspections shall be original inspections and not reinspections.

Any reinspection shall be performed for not more than the price of the registered company's original inspection price and shall be completed within 10 working days after a reinspection has been ordered.

(c) At the time a report is ordered, the registered company or licensee shall inform the person or entity ordering the report, that a separated report is available pursuant to this subdivision. If a separated report is requested at the time the inspection report is ordered, the registered company or licensee shall separately identify on the report each recommendation for corrective measures as follows:

(1) The infestation or infection which is evident.

(2) The conditions that are present which are deemed likely to lead to infestation or infection.

If a registered company or licensee fails to inform as required by this subdivision and a dispute arises, or if any other dispute arises as to whether this subdivision has been complied with, a separate report shall be provided within 24 hours of the request but, in no event, later than the next business day, and at no additional cost.

(d) When a corrective condition is identified, either as paragraph (1) or (2) of subdivision (c), and the responsible party, as negotiated between the buyer and the seller, chooses not to correct those conditions, the registered company or licensee shall not be liable for damages resulting from a failure to correct those conditions or subject to any disciplinary action by the board. Nothing in this subdivision, however, shall relieve a registered company or a licensee of any liability resulting from negligence, fraud, dishonest dealing, other violations pursuant to this chapter, or contractual obligations between the registered company or licensee and the responsible parties.

(e) The inspection report form prescribed by the board shall separately identify paragraphs (1) and (2) of subdivision (c). Additionally, the form shall explain paragraphs (1) and (2) of subdivision (c) conditions and the difference between those conditions. In no event, however, shall conditions described

pursuant to paragraph (2) of subdivision (c) be characterized as actual "defects" or as actual "active" infestations or infections or in need of correction as a precondition to issuing a certification pursuant to Section 8519.

(f) The report and any contract entered into shall also state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall be in effect.

(g) Control service is defined as the regular reinspection of a property after a report has been made in compliance with this section and such corrections as have been agreed upon have been completed. Under a control service agreement a registered company shall refer to the original report and contract in a manner as to identify them clearly, and the report shall be assumed to be a true report of conditions as originally issued, except it may be modified after a control service inspection. A registered company is not required to issue a report as outlined in paragraphs (1) to (9), inclusive, of subdivision (b) after each control service inspection. If after control service inspection, no modification of the original report is made in writing, then it will be assumed that conditions are as originally reported. A control service contract shall state specifically the particular wood destroying pests or organisms and the portions of the buildings or structures covered by the contract.

(h) Whenever a report is filed pursuant to subdivision (b), the board shall forthwith send to any person or firm designated under paragraph (3) of that subdivision a certified copy of all inspection reports and completion notices made on the property and filed with the board during the preceding two years, if so requested and upon payment of an appropriate search fee.

(i) All work recommended by a registered company, where an estimate or bid for making repairs was given with the original inspection report, or thereafter, shall be recorded on this report or a separate work agreement and shall specify a price for each recommendation. This information shall be provided to the person requesting the inspection, and shall be retained by the registered company with the inspection report copy for two years.

This section shall become operative on July 1, 1989.

SEC. 1.2. Section 8516.1 of the Business and Professions Code is repealed.

SEC. 1.3. Section 8516.1 is added to the Business and Professions Code, to read:

8516.1. (a) This section applies only to work conducted under a Branch 4 license.

(b) No Branch 4 registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying organisms or nondecay fungi on a wood shake or shingle roof until an inspection has been made. All inspections performed by Branch 4 registered companies or

licensees shall be limited to the wood shakes or shingles on wood shake or shingle roofs and may only be performed for purposes of detecting the presence or absence of (1) wood destroying organisms such as decay fungi on the wood shakes or shingles and resulting decay, or (2) nondecay fungi such as mold, mildew, lichen, or moss on the wood shakes or shingles.

(c) All Branch 4 registered companies shall retain for three years all field reports from which a verbal or written estimate of or solutions for work are made. A written inspection report conforming to this section and on a form prescribed by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent. If the person requesting the inspection contracts with the Branch 4 registered company for the performance of Branch 4 services, a copy of each report shall be filed with the board not later than five working days after the date the contract is executed. The report shall be delivered to the person requesting the inspection, or to the person's designated agent, before work is commenced. The following items shall be set forth in the report:

(1) The date of the inspection and the name of the licensee making the inspection.

(2) The name and address of the person or firm ordering the report.

(3) The name and address of any person who is a party in interest to whom the board is to send certified copies of the inspection reports and completion notices as provided in subdivision (e).

(4) The address or location of the property.

(5) A general description of the building inspected.

(6) A diagram or sketch of the roof inspected indicating thereon the type and approximate location of any infection of wood destroying organisms or nondecay fungi.

(7) Information regarding conditions usually deemed likely to lead to infection of wood destroying organisms and nondecay fungi.

(8) Recommendations for corrective measures.

(9) Information regarding the wood preservative to be used for control of the wood destroying organisms and nondecay fungi as set forth in subdivision (a) of Section 8538.

(d) The report and any contract entered into shall also state specifically when any guarantee for the work is made, and if so, the specific terms of the guarantee and the period of time for which the guarantee shall take effect.

(e) Whenever a report is filed pursuant to subdivision (c), the board shall forthwith send to any person or firm designated under paragraph (3) of that subdivision a certified copy of all inspection reports and completion notices made on the property and filed with the board during the preceding two years, if so requested, and, upon payment of an appropriate search fee.

(f) All work recommended by a Branch 4 registered company, where an estimate or bid for making repairs was given with the

original inspection report, or thereafter, shall be recorded on that report or a separate work agreement and shall specify a price for each recommendation. This information shall be provided to the person requesting the inspection, and shall be retained by the registered company with the inspection report copy for two years.

SEC. 1.4. Section 8516.2 is added to the Business and Professions Code, to read:

8516.2. Each copy of an inspection report filed with the board pursuant to Section 8516 or 8516.1 shall have affixed thereto a stamp issued by the board in the denomination fixed by the board pursuant to Section 8674 as the inspection report filing fee. The board shall provide for the sale of such stamps and for the refund of moneys paid for stamps which are returned to it unused.

SEC. 1.45. Section 8517 of the Business and Professions Code is amended to read:

8517. Any work contract, billing, agreement, letter of work completed, or other correspondence or document expressing an opinion or making a statement relating to the presence or absence of wood destroying pests or organisms, or for Branch 4, relating to the presence or absence of wood destroying organisms or nondecay fungi, shall refer to the inspection report required by Section 8516, or, for Branch 4, required by Section 8516.1. Such documents shall indicate specifically whether all of the recommended work as set forth in the inspection report was completed, or, if not, it shall indicate specifically which recommendations were not completed.

SEC. 1.5. Section 8538 of the Business and Professions Code is amended to read:

8538. (a) A structural pest control operator, field representative, or employee of a registered company shall provide the owner, or owner's agent, and tenant of the premises for which the work is to be done with clear written notice which contains the following statements and information using words with common and everyday meaning:

(1) The pest to be controlled or in the case of Branch 4 applications, the purpose of applying the wood preservative or preservatives.

(2) The pesticide or pesticides proposed to be used, and the active ingredient or ingredients.

(3) "State law requires that you be given the following information: CAUTION—PESTICIDES ARE TOXIC CHEMICALS. Structural Pest Control Companies are registered and regulated by the Structural Pest Control Board, and apply pesticides which are registered and approved for use by the California Department of Food and Agriculture and the United States Environmental Protection Agency. Registration is granted when the state finds that based on existing scientific evidence there are no appreciable risks if proper use conditions are followed or that the risks are outweighed by the benefits. The degree of risk depends upon the degree of exposure, so exposure should be minimized."

"If within 24 hours following application you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or poison control center (telephone number) and your pest control company immediately." (This statement shall be modified to include any other symptoms of overexposure which are not typical of influenza.)

"For further information, contact any of the following: Your Pest Control Company (telephone number); for Health Questions—the County Health Department (telephone number); for Application Information—the County Agricultural Commissioner (telephone number) and for Regulatory Information—the Structural Pest Control Board (telephone number and address)."

(b) In the case of Branch 1 applications, the notice, as prescribed by subdivision (a), shall be provided at least 48 hours prior to application unless fumigation follows inspection by less than 48 hours

In the case of Branch 2, Branch 3 or Branch 4 applications, the notice, as prescribed by subdivision (a) shall be provided no later than prior to application.

In either case, the notice shall be given to the owner, or owner's agent, and tenant, if there is a tenant, in at least one of the following ways:

(1) First-class mail

(2) Posting in a conspicuous place on the real property.

(3) Personal delivery.

If the building is commercial or industrial, a notice shall be posted in a conspicuous place, unless the owner or owner's agent objects, in addition to any other notification required by this section.

The notice shall only be required to be provided at the time of the initial treatment if a contract for periodic service has been executed. If the pesticide to be used is changed, another notice shall be required to be provided in the manner previously set forth herein.

(c) On or before January 1, 1986, the board shall promulgate appropriate administrative regulations for the implementation of this section.

(d) Any person or licensee who, or registered company which, violates any provision of this section is guilty of a misdemeanor and is punishable as set forth in Section 8553.

SEC. 2. Section 8551.5 of the Business and Professions Code is amended to read:

8551.5. No unlicensed individual in the employ of a registered company shall apply any insecticide, pesticide, rodenticide, fumigant, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling or preventing infestation or infections of such pests, or organisms included in Branch 2, Branch 3, or Branch 4 unless that individual has successfully passed an examination conducted by the board pursuant to Section 8564.5.

SEC. 2.5. Section 8551.5 of the Business and Professions Code is amended to read:

8551.5. No unlicensed individual in the employ of a registered company shall apply any insecticide, pesticide, rodenticide, fumigant, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling or preventing infestation or infections of such pests, or organisms included in Branch 2, Branch 3, or Branch 4 unless that individual has successfully passed an examination conducted by the board pursuant to Section 8564.5. However, that individual may, for 30 days from the date of hire, apply insecticides, pesticides, rodenticides, fumigants, or allied chemicals for the purposes of training under the direct supervision of a licensee employed by the company. This direct supervision means in the presence of the licensee at all times. The 30-day time period may not be extended.

SEC. 3. Section 8556 of the Business and Professions Code is amended to read:

8556. (a) Licensed contractors acting in their capacity as such, may remove and replace any structure or portions of a structure damaged by wood-destroying pests or organisms if such work is incidental to other work being performed on the structure involved or if such work has been identified by a structural pest control inspection report. Licensed contractors acting in their capacity as such may apply wood preservatives directly to end cuts and drill holes of pressure treated wood, and to foundation wood as required by building codes, as well as to fencing and decking, by brush, dip, or spray method and need not obtain a structural pest control operator's license under this chapter for performance of that work, provided a disclosure in the following form is submitted on the customer in writing: "The application of a wood preservative is intended to prevent the establishment and flourishing of organisms which can deteriorate wood. If you suspect pest infestation or infection, contact a licensed structural pest control operator prior to the application of a wood preservative."

These exemptions do not authorize the performance of any other acts defined in Section 8505.

(b) A licensed contractor may contract for the performance of any soil treatment pest control work to eliminate, exterminate, control, or prevent infestations or infections of pests or organisms in the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work must be done by a registered structural pest control company.

SEC. 4. Section 8560 of the Business and Professions Code is amended to read:

8560. (a) Licenses issued to operators or field representatives shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. For the purpose of delimiting the type and character of work authorized by the various branch licenses hereinafter set forth, the practice of pest control is classified into the following branches, namely,

Branch 1. Fumigation. The practice relating to the control of household and wood destroying pests or organisms by fumigation with poisonous or lethal gases.

Branch 2. General pest. The practice relating to the control of household pests, excluding fumigation with poisonous or lethal gases.

Branch 3. Termite. The practice relating to the control of wood destroying pests or organisms by the use of insecticides, or structural repairs and corrections, excluding fumigation with poisonous or lethal gases.

Branch 4. Roof restoration. The practice of inspecting wood shake or shingle roofs to determine the presence or absence of (1) wood destroying organisms including decay fungi on the wood shakes or shingles, and resulting decay, and (2) nondecay fungi including mold, mildew, lichen, or moss; cleaning the wood shakes or shingles; and applying wood preservatives to the wood shakes or shingles to prevent infection of wood destroying organisms or nondecay fungi or further damage from wood destroying organisms.

The board may issue a license for a combination of two or more branches for which an applicant qualifies under the provisions of this chapter, and such combination license shall be considered one license for the purpose of determining the fee to be charged under Section 8674.

(b) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. All examination papers shall be kept for a period of one year, upon the expiration of which such papers may be destroyed on order of the board. Each applicant for license shall be designated by a number instead of by name, and the identity thereof shall not be disclosed until the examination papers are graded. No person shall be admitted to the examination room except members of the board, the examining personnel, and the applicants for license.

(c) The board shall make rules and regulations for the purpose of securing fair, impartial, and proper examinations.

(d) Licensees of any branch may be licensed in other branches upon complying with the requirements for qualification and by examination in such other branches. No failure of the licensee to pass examination in such other branch or branches shall have any effect on existing licenses.

(e) Such examination shall be in each of the subjects specified in the branch or branches relating to the respective applications. License according to such applications shall be granted to any applicant who shall make a general average of not less than 70 percent on each of the subjects of such branch or branches.

SEC. 5. Section 8561 of the Business and Professions Code is amended to read:

8561. Any individual 18 years of age or over may apply for a license as an operator.

The applicant shall possess the qualifications and be examined as hereinafter prescribed. The applicant shall apply to the board for the

issuance of an operator's license within one year of passing the examination.

SEC. 6. Section 8562 of the Business and Professions Code is amended to read:

8562. To obtain an original operator's license, an applicant shall submit to the registrar an application in writing containing the statement that the applicant desires the issuance of an operator's license under the terms of this chapter.

The application shall be made on forms prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board, and shall contain the following:

(a) The name of the applicant.

(b) Proof satisfactory to the board that the applicant has had actual experience for a period of not less than the time specified opposite the branches listed below in the employ of a registered company in the State of California in the particular branch or branches of pest control for which the applicant desires to be licensed, or the equivalent of that experience:

Branch 1	2 years
Branch 2	2 years
Branch 3	4 years
Branch 4	2 years

For the purpose of this subdivision one year shall equal 1,600 hours of actual experience in the field. However, any person who was actively involved in the business of commercially applying wood preservatives to shake or shingle roofs for at least two years in the five-year period prior to July 1, 1990, is deemed to have sufficient experience for Branch 4, provided the person submits proof to the board of that experience, and that person shall not be required to demonstrate to the board that he or she has satisfactorily passed the courses specified in Section 8565.5 as a condition for the issuance of a Branch 4 operator's license.

(c) A designation of the branch or branches for which the application is made.

(d) The fees prescribed by this chapter.

(e) No operator's license shall be issued to an individual under 18 years of age.

SEC. 7. Section 8563 of the Business and Professions Code is amended to read:

8563. Any individual 18 years of age or over may apply for a license as field representative.

The applicant shall possess the qualifications and be examined as hereinafter prescribed. The applicant shall apply to the board for the issuance of a field representative's license within one year from the date the applicant passes the examination.

SEC. 7.5 Section 8564 of the Business and Professions Code is amended to read:

8564. To obtain an original field representative's license, an applicant shall submit to the registrar an application in writing containing a statement that the applicant desires the issuance of a field representative's license under the terms of this chapter.

The application shall be made on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board, and shall contain the following:

(a) The length of time during which the applicant has engaged in any work relating to pest control.

(b) The name and place of business of the person who last employed him or her.

(c) The name of the person by whom the applicant is employed.

(d) The name of the registered company by which the applicant is to be employed.

(e) The fees prescribed by this chapter.

The board shall not accept any application for a field representative license in Branch 1 unless the applicant submits proof satisfactory to the board that he or she has had six months' training and experience in the practice of fumigating with poisonous or lethal gases under the immediate supervision of an individual licensed to practice fumigating, or the equivalent of such training and experience.

The board shall not accept any application for a field representative license in Branch 2 unless the applicant submits proof satisfactory to the board that he or she has had training and experience in the practice of pesticide application, Branch 2 pest identification and biology, pesticide application equipment, and pesticide hazards and safety practice under the immediate supervision of an operator or field representative licensed in Branch 2, or the equivalent of such training and experience.

The board shall not accept any application for a field representative license in Branch 3 unless the applicant submits proof satisfactory to the board that he or she has had training and experience in the practice of pesticide application, Branch 3 pest identification and biology, pesticide application equipment, pesticide hazards and safety practices, structural repairs, and structural inspection procedures and report writing under the immediate supervision of an operator or field representative licensed in Branch 3, or the equivalent of such training and experience.

The board, on and after July 1, 1990, shall not accept any application for a field representative license in Branch 4 unless the applicant submits proof satisfactory to the board that he or she has had experience and training in the practice of identification of wood destroying organisms and nondecay fungi on wood shake or shingle roofs, wood preservative application equipment, wood preservative hazards and safety practices, wood shake or shingle roof inspection procedures and report writing under the immediate supervision of an operator or field representative licensed in Branch 4, and wood

preservative application procedures, or the equivalent of that experience and training.

SEC. 8. Section 8564.5 of the Business and Professions Code is amended to read:

8564.5. (a) Prior to the application of any chemical substance included in Branch 2 or Branch 3 by any unlicensed individual in the employ of a registered company, as specified in Section 8551 5, the board shall ascertain by written examination that such individual has sufficient knowledge in pesticide equipment, pesticide mixing and formulation, pesticide application procedures and pesticide label directions.

(b) Prior to the application of any wood preservative, as part of a roof restoration process covered under Branch 4, by any unlicensed individual in the employ of a registered company as specified in Section 8551.5, the board shall, on and after July 1, 1990, ascertain by written examination that the individual has sufficient knowledge of wood preservative application equipment, wood preservative application procedures, mixing and formulation and wood preservative label directions

(c) The board may charge a fee for any examination required by this section in an amount sufficient to cover the cost of administering such examination, provided, however, that such fee shall not exceed fifteen dollars ($15).

SEC. 8 5. Section 8564.5 of the Business and Professions Code is amended to read:

8564.5. (a) Prior to the application of any chemical substance included in Branch 2 or Branch 3 by any unlicensed individual in the employ of a registered company, as specified in Section 8551.5, the board shall ascertain by written examination that such individual has sufficient knowledge in pesticide equipment, pesticide mixing and formulation, pesticide application procedures and pesticide label directions.

(b) Passage of the written examination authorizes an individual to apply any chemical substance in Branch 2 or Branch 3 for a period not to exceed three years at which time he or she shall again apply for and successfully pass the written examination.

(c) Individuals who have successfully passed the written examination by January 1, 1990, shall again successfully pass the examination by January 1, 1991, in order to allow the individual to apply any chemical substance in Branch 2 or Branch 3 for a period not to exceed three years at which time the individual shall again apply for and successfully pass the written examination.

(d) Prior to the application of any wood preservative, as part of a roof restoration process covered under Branch 4, by any unlicensed individual in the employ of a registered company as specified in Section 8551.5, the board shall, on and after July 1, 1990, ascertain by written examination that the individual has sufficient knowledge of wood preservative application equipment, wood preservative application procedures, mixing and formulation and wood

preservative label directions.

(e) The board may charge a fee for any examination required by this section in an amount sufficient to cover the cost of administering such examination, provided, however, that such fee shall not exceed fifteen dollars ($15).

SEC. 9. Section 8565.5 of the Business and Professions Code is amended to read:

8565.5. (a) An applicant for a Branch 1 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

(1) Pesticides.

(2) Pest identification and biology.

(3) Contract law.

(4) Rules and regulations.

(5) Business practices.

(6) Fumigation safety.

(b) An applicant for a Branch 2 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

(1) Pesticides.

(2) Pest identification and biology.

(3) Contract law.

(4) Rules and regulations.

(5) Business practices.

(c) An applicant for a Branch 3 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

(1) Pesticides.

(2) Pest identification and biology.

(3) Contract law.

(4) Rules and regulations.

(5) Business practices.

(6) Construction repair and preservation techniques.

(d) An applicant for a Branch 4 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

(1) Contract law.

(2) Rules and regulations.

(3) Business practices.

(4) Wood preservatives.

(5) Identification of wood destroying organisms and nondecay fungi on wood shake or shingle roofs.

The board shall develop a correspondence course or courses with such educational institution or institutions as it deems appropriate. Such a course may be used to fulfill the requirements of this section. The institution may charge a reasonable fee for each such course.

SEC. 9.5. Section 8572 is added to the Business and Professions Code, to read:

8572. (a) All requirements in this chapter with respect to (1)

applicants for any Branch 4 license, (2) Branch 4 licensees, or (3) otherwise related to the regulation of Branch 4 activities shall become operative on and after July 1, 1990, insofar as they regulate Branch 4 activities, and this chapter shall not be enforceable against any person applying a wood preservative to a shake or shingle roof before July 1, 1990.

(b) The board shall develop the written examinations required by Sections 8564.5, 8565, and 8566 and begin offering those examinations on or before June 1, 1990.

(c) Any person intending to apply for a Branch 4 operator's license shall be permitted by the board to complete the courses required by subdivision (d) of Section 8565.5 before July 1, 1990.

(d) The board shall make necessary conforming changes to its regulations with respect to the licensing of individuals under Branch 4.

SEC. 9.7. Section 2.5 of this bill incorporates amendments to Section 8551.5 of the Business and Professions Code proposed by both this bill and AB 908. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 8551 5 of the Business and Professions Code, and (3) this bill is enacted after AB 908, in which case Section 2 of this bill shall not become operative.

SEC. 9.8. Section 8.5 of this bill incorporates amendments to Section 8564.5 of the Business and Professions Code proposed by both this bill and AB 908. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 8564.5 of the Business and Professions Code, and (3) this bill is enacted after AB 908, in which case Section 8 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1402

An act to amend Section 782 of the Evidence Code, and to amend Sections 288, 290, 667.51, 667.6, 868 5, 868.8, 1203, 1203.066, and 1346 of, and to add Sections 288.5 and 1192.8 to, the Penal Code, relating to sex offenses.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. (a) The Legislature finds and declares that because of the court's decision in People v. Van Hoek 200 Cal. App. 3d 811, there is an immediate need for additional statutory protection for the most vulnerable among our children, those of tender years, some of whom are being subjected to continuing sexual abuse by those commonly referred to as "resident child molesters." These molesters reside with, or have recurring access to, a child and repeatedly molest the child over a prolonged period of time but the child, because of age or the frequency of the molestations, or both, often is unable to distinguish one incident from another in terms of time, place, or other particulars, and as a consequence prosecutors are unable to provide the specificity of charges necessary to overcome the constitutional due process problems raised in the Van Hoek case within the framework of existing statutory law. As a consequence, some of our most vulnerable children continue to be at risk and some of our worst offenders continue to go unpunished.

(b) It is the intent of the Legislature in enacting this act to provide additional protection for children subjected to continuing sexual abuse and certain punishment for persons referred to as "resident child molesters" by establishing a new crime of continuing sexual abuse of a child under circumstances where there have been repeated acts of molestation over a period of time, and the perpetrator either resides with or has recurring access to the child. It is the further intent of the Legislature that the penalty for this crime shall be greater than the maximum penalty under existing law for any single felony sex offense.

SEC. 2. Section 782 of the Evidence Code is amended to read:

782. (a) In any prosecution under Section 261, 264.1, 286, 288, 288a, 288.5, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit any crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness under Section 780, the following procedure shall be followed:

(1) A written motion shall be made by the defendant to the court

and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at such hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352 of this code, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(b) As used in this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section.

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 that person or of the 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) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and the defendant is at least 10 years older than the child, shall be guilty of a public offense and shall be imprisoned in the state prison for one, two, or three years, or by imprisonment in the county jail for not more than one year.

(d) In any arrest or prosecution under this section or under Section 288.5 the peace officer, the district attorney, and the court shall consider the needs of the child victim and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to

exceed 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 288.5 is added to the Penal Code, to read:

288.5. (a) Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of the offense, as defined in subdivision (b) of Section 1203.066, or three or more acts of lewd or lascivious conduct under Section 288, with a child under the age of 14 years at the time of the commission of the offense is guilty of the offense of continuous sexual abuse of a child and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years.

(b) To convict under this section the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred not on which acts constitute the requisite number.

(c) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved in which case a separate count may be charged for each victim.

SEC. 5. 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, 288.5, 289, or 647.6 or former Section 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, 288.5, 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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, 288.5, 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 Youthful Offender Parole Board, 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. 5.5. 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, 288.5, 289, or 647.6 or former Section 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, 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, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(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 or agencies 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 or agencies 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 or agencies, 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 or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the 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, 288.5, 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 (1) a statement in writing signed by the person, giving such 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 or agencies 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 or agencies with

whom he or she last registered of the new address. The law enforcement agency or agencies 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 or agencies having local jurisdiction of the new place of residence.

(g) (1) 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, 288.5, 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.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in the county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph 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.

(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 Youthful Offender Parole Board, 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 or agencies. 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. 5.6. 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, 288.5, 289, or 647.6 or former Section 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 felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; 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, 288.5, 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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, 288.5, 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 Youthful Offender Parole Board, 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. 5.7. 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, 288.5, 289, or 647.6 or former Section 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 felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; 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, 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, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(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 or agencies 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 or agencies 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 or agencies, 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 or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the 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, 288.5, 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 (1) a statement in writing signed by the person, giving such 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 or agencies 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 or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies 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 or agencies having local jurisdiction of the new place of residence.

(g) (1) 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, 288.5, 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.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in the county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph 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.

(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 Youthful Offender Parole Board, 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 or agencies. 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. 6. Section 667.51 of the Penal Code is amended to read:

667.51. (a) Any person who is found guilty of violating Section 288 shall receive a five-year enhancement for a prior conviction of an offense listed in subdivision (b) 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 the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Section 261, 264.1, 285, 286, 288, 288a, 288.5, or 289.

(c) Section 261, 264.1, 286, 288, 288a, 288.5, or 289.

(d) A violation of Section 288 by a person who has been previously

convicted two or more times of an offense listed in subdivision (c) is punishable as a felony by imprisonment in the state prison for 15 years to life. However, if the two or more prior convictions were for violations of Section 288, this subdivision is applicable only if the current violation or at least one of the prior convictions is for an offense other than a violation of subdivision (a) of Section 288. For purposes of this subdivision, a prior conviction is required to have been for charges brought and tried separately. 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 such person shall not otherwise be released on parole prior to such time.

SEC. 7. 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 288.5, 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 Section 220, other than an assault with intent to commit mayhem, provided the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, subdivision (2) or (3) of Section 261, Section 264.1, subdivision (b) of Section 288, Section 288.5, 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 Section 220, other than an assault with intent to commit mayhem, provided the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, 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. 8. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other provision of law, a prosecuting witness in a case involving a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, 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 persons 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 witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(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. 8.5. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other provision of law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.5, 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 persons 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 witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(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. 9. Section 868.8 of the Penal Code is amended to read:

868.8. Notwithstanding any other provision of law, in any criminal proceeding in which the defendant is charged with a violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, subdivision (1) of Section 314, Section 647.6, or former Section 647a, committed with or upon a minor under the age of 11, the court shall take special precautions to provide for the comfort and support of the minor and to protect the minor from coercion, intimidation, or undue influence as a witness, including, but not limited to, any of the following:

(a) In the court's discretion, the witness may be allowed reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the child witness retires from the courtroom.

(b) Notwithstanding Section 68110 of the Government Code, in his or her discretion, the judge may remove his or her robe if the judge believes that this formal attire intimidates the minor.

(c) In the court's discretion the judge, parties, witnesses, support persons, and court personnel may be relocated within the courtroom to facilitate a more comfortable and personal environment for the child witness.

(d) In the court's discretion, the taking of the child's testimony may be limited to the hours during which the child is normally in school, if there is no good cause to take the child's testimony during other hours.

SEC. 10. Section 1192.8 is added to the Penal Code, to read:

1192.8. For purposes of subdivision (c) of Section 1192.7, "serious felony" also means any violation of Section 288.5.

SEC. 11. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b) 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 attorneys at least five days, or upon request of the defendant or prosecuting attorney, 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 such information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his 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 such crimes and was armed with such weapon at either of such times.

(2) Any person who used or attempted to use a deadly weapon

upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288.5, or 288a, or a conspiracy to commit one or more of such crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of such previous crime or his or her arrest for such previous crime, he or she was armed with such weapon at either of such times.

(B) The person used or attempted to use a deadly weapon upon a human being in connection with the perpetration of such previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of such previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(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.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(g) If a person is not eligible for probation, the judge 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 shall obtain and include in such report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain such a statement in any case where the victim has in fact testified at any of the court proceedings concerning the offense

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4).

(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 such 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 such 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. 11.5. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of the probation officer. As used in this code, "conditional sentence" shall mean the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option

for infractions or misdemeanors.

(b) 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 attorneys at least five days, or upon request of the defendant or prosecuting attorney, 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 such information For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his 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 such a 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, 288.5, 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 a 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.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machinegun under Section 12220, or a silencer under Section 12520.

(f) When probation is granted in a case which comes within the provisions of subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by such a disposition.

(g) If a person is not eligible for probation, the judge 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 the 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 that 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 shall 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 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. 12. Section 1203.066 of the Penal Code is amended to read:

1203.066. (a) Notwithstanding Section 1203, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provisions of this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) A person convicted of violating Section 288 when the act is committed by the use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(2) A person who caused bodily injury on the child victim in committing a violation of Section 288.

(3) A person convicted of a violation of Section 288 and who was a stranger to the child victim or made friends with the child victim for the purpose of committing an act in violation of Section 288, unless the defendant honestly and reasonably believed the victim was 14 years old or older.

(4) A person who used a weapon during the commission of a violation of Section 288.

(5) A person convicted of committing a violation of Section 288 and who has had a prior conviction of Section 261, 264.1, 267, 285, 288, or 289, 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, of assaulting another with intent to commit a crime specified in this paragraph in violation of Section 220, or a violation of Section 266.

(6) A person convicted of kidnapping the child victim in violation of either Section 207 or 209 and who kidnapped the victim for the purpose of committing a violation of Section 288.

(7) A person who is convicted of committing a violation of Section 288 on more than one victim at the same time or in the same course of conduct.

(8) A person who in violating Section 288 or 288.5 has substantial sexual conduct with a victim under the age of 11 years.

(9) A person who occupies a position of special trust and commits an act of substantial sexual conduct. "Position of special trust" means that position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the victim. Position of authority includes, but is not limited to, the position occupied by a natural parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.

(10) A person who, in committing a violation of Section 288, used obscene matter, as defined in Section 311, or matter (as defined in Section 311) depicting sexual conduct, as defined in Section 311.3.

(b) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation, or masturbation of either the victim or the offender.

(c) Paragraphs (7), (8), (9), and (10) of subdivision (a) shall not apply when the court makes all of the following findings:

(1) The defendant is the victim's natural parent, adoptive parent, stepparent, relative, or is a member of the victim's household who has lived in the household.

(2) Imprisonment of the defendant is not in the best interest of the child.

(3) Rehabilitation of the defendant is feasible in a recognized treatment program designed to deal with child molestation, and if the defendant is to remain in the household, a program that is specifically designed to deal with molestation within the family.

(4) There is no threat of physical harm to the child victim if there is no imprisonment. The court upon making its findings pursuant to this subdivision is not precluded from sentencing the defendant to jail or prison, but retains the discretion not to. The court shall state its reasons on the record for whatever sentence it imposes on the defendant.

The court shall order the psychiatrist or psychologist appointed pursuant to Section 288.1 to include a consideration of the factors specified in paragraphs (2), (3), and (4) in making his or her report to the court.

(d) The existence of any fact 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.

SEC. 13. Section 1346 of the Penal Code is amended to read:

1346. (a) When a defendant has been charged with a violation of Section 243.4, 261, 261.5, 264.1, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, where the victim either is a person 15 years of age or less or is developmentally disabled as a result of mental retardation, as

specified in subdivision (a) of Section 4512 of the Welfare and Institutions Code, the people may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be recorded and preserved on video tape.

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

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved on video tape. The video tape shall be transmitted to the clerk of the court in which the action is pending.

(d) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or otherwise unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the video tape of the victim's testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(e) 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 victim. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) Any video tape made pursuant to this section shall be made available to the prosecuting attorney, the defendant, and his or her attorney for viewing during ordinary business hours. Any video tape which is made available pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim.

(g) The tape shall be destroyed after five years have elapsed from the date of entry of judgment; provided, however, that if an appeal is filed, the tape shall not be destroyed until a final judgment on appeal has been rendered.

SEC. 13.5. (a) Section 5.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and SB 203. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 290 of the Penal Code, and (3) AB 1008 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 203, in which case Sections 5, 5.6, and 5.7 of this bill shall not become operative.

(b) Section 5.6 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 1008. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 290 of the Penal Code, (3) SB 203 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1008 in which case Sections 5, 5.5, and 5.7 of this bill shall not become operative.

(c) Section 5.7 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, SB 203, and AB 1008. It shall only become operative if (1) all three bills are enacted and become

effective January 1, 1990, (2) all three bills amend Section 290 of the Penal Code, (3) this bill is enacted after SB 203 and AB 1008, in which case Sections 5, 5.5, and 5.6 of this bill shall not become operative.

SEC. 13.6. Section 8.5 of this bill incorporates amendments to Section 868.5 of the Penal Code proposed by both this bill and AB 1710. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 868.5 of the Penal Code, and (3) this bill is enacted after AB 1710, in which case Section 8 of this bill shall not become operative.

SEC. 13.7. Section 11.5 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by both this bill and AB 688. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 1203 of the Penal Code, and (3) this bill is enacted after AB 688, in which case Section 11 of this bill shall not become operative.

SEC. 14. If any provision of this act or the application thereof to any person or circumstance 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. 15. 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.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1403

An act to amend Section 37700 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. The Legislature finds and declares that the Pacific Elementary School District is currently faced with a severe financial deficit and significant pupil attendance problems, both of which are exacerbated by the need to transport its pupils to school from areas in the district that require a travel time in excess of one hour in each direction.

The Legislature also finds and declares that because of the completion of unification proceedings, the Pacific Elementary School District will be renamed the Pacific Unified School District as of July 1, 1989.

In order for this district to continue to provide education to its pupils who are widely dispersed throughout the district, it is necessary that the Pacific Unified School District be permitted to operate schools on the basis of a four-day school week.

SEC. 2. Section 37700 of the Education Code is amended to read:

37700. (a) Notwithstanding any other provision of law, the Death Valley Unified School District, the Needles Unified School District, and the Pacific Unified School District may each operate one or more schools in the district on a four-day school week during the 1989–90 school year and each year thereafter through the 1992–93 school year, so long as the district complies with the instructional time requirements specified in Section 37701 and the other requirements of this chapter.

(b) If a school district operates a four-day week pursuant to this section and the program for the school year provides less than the 180 days of instruction required under Section 46200, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year by the amount the school district would have received for the increase received pursuant to subdivision (a) of Section 46200, as adjusted in fiscal years subsequent to the 1984–85 fiscal year. If a school district operates a four-day school week pursuant to this section and the program provides less than the minimum instructional minutes required under Section 46201, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year in which the reduction occurs by the amount the school district would have received for the increase in the 1987–88 fiscal year base revenue limit per unit of average daily

attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

SEC. 3. Due to unique circumstances regarding the Pacific Unified School District, as set forth in Section 1, the Legislature hereby 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. 4. If this act becomes effective on or before July 1, 1989, Sections 1 to 4, inclusive, shall become operative on July 1, 1989. If this act becomes effective after July 1, 1989, it shall become operative on its effective date.

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 authorize the Pacific Unified School District to commence the operation of schools on a four-day school week, as essential to respond to the critical circumstances described in Section 1 of this act, it is necessary that this act take effect immediately.

CHAPTER 1404

An act to amend Section 17740.3 of the Education Code, relating to school facilities.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 17740.3 of the Education Code is amended to read:

17740.3. (a) Notwithstanding any other provision of this part, the estimate of average daily attendance for an applicant school district shall be calculated for up to and including two years longer than the period of time permitted by Section 17740, as requested by the district, where 50 percent or more of the cost of the project is provided by the district from funding sources other than any state program administered by the board. For the purposes of any subsequent project application from that district based upon additional growth in pupil enrollment, the estimate of average daily attendance shall be based on enrollment projections for any period of time, as requested by the district, up to and including that permitted by Section 17740.

(b) Section 17705.5 does not apply to any project funded pursuant to this section.

(c) The project shall be "fast tracked." For purposes of this

section, "fast tracking" means that the total amount of project funding eligibility shall be established upon the board's approval of the project, which shall be subsequently disbursed as necessary for the development and construction of the project without the prerequisite of any additional state certification or other state-conducted review of project eligibility. Based upon the results of an audit to be conducted upon completion of the project, the board or the applicant district, as appropriate, shall pay to the other any amount that is necessary to conform to the allocation of project costs determined upon the board's approval of the project.

In the event that the applicant district has not executed all contractual agreements necessary for the complete construction of the project within a period of 18 months following the board's approval of the project, this subdivision shall cease to apply to the project with regard to any state funding of the project not yet disbursed. Upon request of the applicant district and approval by the board, this 18-month period may be extended for an additional period of up to six months to account for one or more delays resulting from circumstances beyond the district's control.

CHAPTER 1405

An act to add Section 99304 to the Public Utilities Code, and to amend Sections 30891, 30911, 30912, 30913, 30914, 30917, and 30920 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 October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 99304 is added to the Public Utilities Code, to read.

99304. Notwithstanding Section 29530 of the Government Code, the Metropolitan Transportation Commission may, in situations where an unallocated apportionment has been set aside for an operator for specific future expenditures, also set aside annually the interest earned on the unallocated apportionment that has been set aside until the unallocated apportionment is allocated. The interest amount shall be determined by the Metropolitan Transportation Commission based on its estimate of the average rate of interest earned by the unallocated apportionment during the prior fiscal year.

SEC. 1.5. Section 30841 of the Streets and Highways Code is amended to read:

30891. The commission may retain, for its cost in administering

this article, an amount not to exceed one-quarter of 1 percent of the net revenues allocated by it pursuant to Section 30892 and of the net revenues allocated by it pursuant to subdivision (b) of Sections 30913 and 30914 and paragraph (4) of subdivision (a) of Section 30914.

SEC. 2. Section 30911 of the Streets and Highways Code is amended to read:

30911. (a) Existing accounts used to record toll bridge revenues and expenditures of the northern bridge unit shall be designated as subaccounts within the San Francisco Bay Bridges-Northern Unit Account, which is hereby created in the State Transportation Fund.

(b) Existing accounts used to record toll bridge revenues and expenditures of the southern bridge unit shall be designated as subaccounts within the San Francisco Bay Bridges-Southern Unit Account, which is hereby created in the State Transportation Fund.

(c) Revenues in each of the accounts created by this section shall be kept segregated and set apart from other funds.

(d) (1) After the requirements of any bond resolution of the California Transportation Commission for any outstanding revenue bonds have been met, the department shall transfer, at least quarterly, the revenues defined in subdivision (b) of Sections 30913 and 30914, and paragraph (4) of subdivision (a) of Section 30914, to the Toll Bridge Revenues Account in the State Transportation Fund. The funds transferred are hereby continuously appropriated to the Controller, who shall maintain a separate account for the revenues transferred pursuant to each of the subdivisions specified in this subdivision. At least quarterly, after deductions for administrative costs, the Controller shall, subject to the terms and conditions of a bond resolution or indenture adopted or authorized by the commission and approved by the Metropolitan Transportation Commission pursuant to Section 30920, disburse any such funds available to the Metropolitan Transportation Commission which shall expend them for the purposes specified in subdivision (b) of Section 30913 or 30914, or paragraph (4) of subdivision (a) of Section 30914.

(2) For purposes of paragraph (1), the revenues defined in subdivision (b) of Sections 30913 and 30914 and paragraph (4) of subdivision (a) of Section 30914 include all revenues accruing since January 1, 1989.

SEC. 3. Section 30912 of the Streets and Highways Code is amended to read:

30912. (a) Revenue derived from tolls on all bridges in a bridge unit may be expended on any bridge and its approaches in that unit for any of the following purposes:

(1) Safety and operational costs, including toll collection and insurance.

(2) Costs of bridge construction and improvement projects specified in Sections 30913 and 30914, including debt service and sinking fund payments on bonds to be issued by the California Transportation Commission for those projects. The repayment of any

advances from other state funds may be made from the toll revenue or bond proceeds. No additional bonds secured by the revenues of any bridge specified in Section 30910 shall be issued without the further approval of the Legislature, except to finance, in whole or in part, the projects authorized by this chapter or to refund bonds issued to finance those projects, if, in the opinion of the California Transportation Commission, a saving in interest costs can be achieved by such refunding.

(b) However, the revenue derived from the toll increase authorized by Sections 30916 and 30917 for Class I vehicles on the San Francisco-Oakland Bay Bridge shall be used, to the extent specified in paragraph (4) of subdivision (a) of Section 30914, for the construction of rail extensions specified in Section 30914 or for payment of the principal of, and interest on, bonds issued for those projects, including payments into a sinking fund maintained for that purpose.

(c) Maintenance of the bridges specified in Section 30910 shall be funded in accordance with procedures for funding maintenance of the southern bridge unit during the 1986–87 fiscal year.

SEC. 4. Section 30913 of the Streets and Highways Code is amended to read:

30913. (a) In addition to any other authorized expenditure of toll bridge revenues, the following major projects may be funded from toll revenues of all bridges in the northern bridge unit:

(1) Benicia-Martinez Bridge: Widening of the existing bridge.

(2) Benicia-Martinez Bridge: Construction of an additional span parallel to the existing bridge.

(3) Carquinez Bridge: Replacement of the existing western span.

(4) Richmond-San Rafael Bridge: Major rehabilitation of the bridge, and development of a new easterly approach between the toll plaza and Route 80, near Pinole.

(b) Notwithstanding Section 30895.5, up to 3 percent of the revenues derived from the toll increase authorized by Sections 30916 and 30917 on all bridges in the northern bridge unit may be allocated by the Metropolitan Transportation Commission for transportation projects, other than those specified in Sections 30912, 30913, and 30914, which are designed to reduce vehicular traffic congestion on any bridge in that group, including, but not limited to, bicycle facilities and for the planning, construction, operation, and acquisition of rapid water transit systems. The plans for the projects may also be funded by these moneys. This section does not authorize any allocation of funds for any transit project which is inconsistent with or which violates the terms of any bond resolution of the California Transportation Commission pursuant to which bonds are outstanding on the effective date of the act amending this section at the 1989–90 Regular Session.

(c) The department shall not include, in the plans for the new Benicia-Martinez Bridge, toll plazas, highways, or other facilities leading to or from the Benicia-Martinez Bridge, any construction

which would result in the net loss of any wetland acreage.

(d) With respect to the Benicia-Martinez and Carquinez Bridges, the department shall consider the potential for rail transit as part of the plans for the new structures specified in paragraphs (2) and (3) of subdivision (a).

(e) At the time the first of the new bridges specified in paragraphs (2) and (3) of subdivision (a) is opened to the public, there shall be a lane for the exclusive use of pedestrians and bicycles available on at least, but not limited to, the original span at Benicia or Carquinez, or the additional or replacement spans planned for those bridges. The design of these bridges shall not preclude the subsequent addition of a lane for the exclusive use of pedestrians and bicycles

SEC. 5. Section 30914 of the Streets and Highways Code is amended to read:

30914. (a) In addition to any other authorized expenditures of toll bridge revenues, the following major projects may be funded from toll revenues of all bridges in the southern bridge unit:

(1) Dumbarton Bridge: Improvement of the western approaches from Route 101 if affected local governments are involved in the planning.

(2) San Mateo-Hayward Bridge and approaches: Widening of the bridge to six lanes, and improvements to the Route 92/Route 880 interchange.

(3) Construction of West Grand connector or an alternate project designed to provide comparable benefit by reducing vehicular traffic congestion on the eastern approaches to the San Francisco-Oakland Bay Bridge. Affected local governments shall be involved in the planning.

(4) Not less than 90 percent of the revenues derived from the toll increase for Class I vehicles on the San Francisco-Oakland Bay Bridge authorized by Sections 30916 and 30917 shall be used exclusively for rail transit capital improvements designed to reduce vehicular traffic congestion on that bridge.

(b) Notwithstanding Section 30895.5, up to 3 percent of the revenues derived from the toll increase authorized by Sections 30916 and 30917 on all bridges in the southern bridge unit may be allocated by the Metropolitan Transportation Commission for transportation projects, other than those specified in Sections 30912, 30913, and 30914, which are designed to reduce vehicular traffic congestion on any bridge in that group, including, but not limited to, bicycle facilities and for the planning, construction, operation, and acquisition of rapid water transit systems. The plans for the projects may also be funded by these moneys. This section does not authorize any allocation of funds for any transit project which is inconsistent with or which violates the terms of any bond resolution of the California Transportation Commission pursuant to which bonds are outstanding on the effective date of the act amending this section at the 1989–90 Regular Session.

(c) The department shall report to the Legislature on the

structural feasibility of incorporating rail transit on the San Mateo-Hayward Bridge during the preliminary design phase for widening that bridge.

SEC. 6. Section 30917 of the Streets and Highways Code is amended to read:

30917. (a) The tolls on any of the bridges specified in Section 30910 shall not be increased prior to the availability of the results of a special election to be held in the City and County of San Francisco and the Counties of Alameda, Contra Costa, Marin, San Mateo, Santa Clara, and Solano to determine whether the residents of those counties approve a uniform toll of one dollar ($1) for Class I vehicles. The revenue derived from the toll increase shall be used to finance capital outlay for bridge construction and major bridge improvement projects as is fiscally practicable. Not less than 90 percent of the increase in revenue derived only from the Class I vehicles on the San Francisco-Oakland Bay Bridge shall be used to finance rail extensions and improvement projects designed to reduce vehicular traffic congestion on that bridge and its approaches, as specified in Section 30914.

(b) Notwithstanding any provision of the Elections Code, the board of supervisors of each of the counties and the city and county specified in subdivision (a) shall call a special election to be conducted in each of those counties and the city and county, which shall be consolidated with the November 8, 1988, general election. The following question shall be presented to the voters of each of the counties as Regional Measure 1, to be stated in the ballot separately from state and local measures:

"Shall the California Transportation Commission and the Metropolitan Transportation Commission be authorized to undertake a revenue bond program to finance major bridge improvements, the construction of new bridges, and mass transit extensions designed to reduce bridge traffic in the bay area, to be financed by bridge tolls which shall not exceed one dollar ($1) for passenger vehicles?"

(c) The results of the special election shall be reported by the county clerks to the California Transportation Commission and the Metropolitan Transportation Commission. If a majority of all of the voters voting on the question at the special election vote affirmatively, the California Transportation Commission shall adopt the toll schedule proposed by the Metropolitan Transportation Commission which shall become effective January 1, 1989.

(d) If a majority of all of the voters voting on the question at the special election vote negatively, this chapter shall be repealed on the day following the day on which the election results are certified.

(e) Except as provided in Section 30918, the toll rates contained in a toll schedule adopted by the California Transportation Commission pursuant to this section shall not be changed without further authorization by the Legislature.

SEC. 7. Section 30920 of the Streets and Highways Code is

amended to read:

30920. (a) The California Transportation Commission may, notwithstanding subdivision (c) of Section 30102.5, issue revenue bonds under the California Toll Bridge Authority Act (Chapter 1 (commencing with Section 30000) of Division 17) to finance any or all of the projects specified in Sections 30913 and 30914 if the issuance of the bonds does not adversely affect the minimum amount of toll revenue proceeds designated in Sections 30913 and 30914 for rail extension and improvement projects and transit projects to reduce vehicular traffic. A determination of the California Transportation Commission that a specific project or projects shall have no adverse effect will be binding and conclusive in all respects.

(b) (1) The Metropolitan Transportation Commission may, notwithstanding subdivision (c) of Section 30102.5, request the California Transportation Commission to issue bonds to finance the rail extension and improvement projects specified in subdivision (b) of Section 30913 and in paragraph (4) of subdivision (a) of, and subdivision (b) of, Section 30914. The expenses of issuance of the bonds, including, but not limited to, fees of financial and other consultants, bond counsel, printing, and personnel costs, the cost of insurance, and all other costs required only to comply with the requirements of the resolution authorizing the issuance of those bonds, may be either paid from bond proceeds or from any revenues available to the Metropolitan Transportation Commission for that purpose.

(2) The Metropolitan Transportation Commission may, in its discretion, request the Controller to allocate all or a portion of the funds in the accounts described in subdivision (d) of Section 30911 in accordance with, and subject to the terms and conditions of, a bond resolution or indenture adopted or authorized by the California Transportation Commission and approved by the Metropolitan Transportation Commission. The Metropolitan Transportation Commission, following a request to the Controller and approval of the bond resolution or indenture of the California Transportation Commission, shall be subject to the terms and conditions of the bond resolution or indenture and the Controller shall only allocate all or a portion of the funds described in subdivision (d) of Section 30911 in a manner fully consistent with the terms and conditions of the bond resolution or indenture. The bonds may be issued pursuant to the California Toll Bridge Authority Act. The California Transportation Commission, upon the approval of the Metropolitan Transportation Commission, may request a loan from the Pooled Money Investment Account in accordance with, and subject to the terms and conditions of, Sections 16312 and 16313 of the Government Code.

(c) The California Transportation Commission shall authorize the issuance of bonds requested by the Metropolitan Transportation Commission pursuant to paragraph (1) of subdivision (b).

SEC. 8. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the revenues to be derived from increases in bridge tolls which became effective January 1, 1989, to be expended as prescribed by this act to meet urgent transportation needs as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1406

An act relating to Medi-Cal.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

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

(a) A disproportionately high number of acquired immune deficiency syndrome (AIDS) patients are concentrated in a few hospitals in the metropolitan areas of San Francisco and Los Angeles.

(b) This concentration of inpatient care does not provide a wide range of available inpatient care for AIDS patients, and negatively affects the hospitals' ability to obtain teaching accreditation for those disproportionate share hospitals that have the bulk of the county's AIDS patients.

SEC. 2. The California Medical Assistance Commission, in consultation with the State Department of Health Services shall include in its annual report for 1991 an assessment of the problems of the distribution of health care for AIDS patients in hospitals in major metropolitan areas of the state, and, to the extent needed, recommendations by the commission on ways to increase access to care for AIDS patients at a wider range of hospitals under the Medi-Cal program.

CHAPTER 1407

An act to amend Section 290 of the Penal Code, relating to crimes.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. 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 647.6 or former Section 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, 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, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(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 or agencies 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 or agencies 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 or agencies, 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 or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 (1) a statement in writing signed by the person, giving such 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 or agencies 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 or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies 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 or agencies having local jurisdiction of the new place of residence.

(g) (1) 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.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in the county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph 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.

(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 Youthful Offender Parole Board, 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 or agencies. 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. 2. 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, 288.5, 289, or 647.6 or former Section 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, 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, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(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 or agencies 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 or agencies 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 or agencies, 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 or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the 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, 288.5, 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 (1) a statement in writing signed by the person, giving such 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 or agencies 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 or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies 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 or agencies having local jurisdiction of the new place of residence.

(g) (1) 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, 288.5, 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.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in the county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph 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.

(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 Youthful Offender Parole Board, 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 or agencies. 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. 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, 288.5, 289, or 647.6 or former Section 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 felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; 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, 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, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(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 or agencies 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 or agencies 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 or agencies, 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 or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 (1) a statement in writing signed by the person, giving such 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 or agencies 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 or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies 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 or agencies having local jurisdiction of the new place of residence.

(g) (1) 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.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a public offense punishable by imprisonment in the county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph 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.

(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 Youthful Offender Parole Board, 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 or agencies. 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 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, 288.5, 289, or 647.6 or former Section 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 felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; 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, 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, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities.

(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 or agencies 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 or agencies 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 or agencies, 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 or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the 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, 288.5, 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) Any person who 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 offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(3) 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.

(4) The duty to register under this section for offenses adjudicated by a juvenile court shall terminate when a person reaches the age of 25.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person 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 (1) a statement in writing signed by the person, giving such 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 or agencies 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 or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies 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 or agencies having local jurisdiction of the new place of residence.

(g) (1) 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, 288.5, 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.

(2) Any person who has two prior convictions for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction,

guilty of a public offense punishable by imprisonment in the county jail not exceeding one year, or by imprisonment in state prison for 16 months, or two or three years.

The existence of any fact which would bring a person under this paragraph 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.

(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 Youthful Offender Parole Board, 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 or agencies. 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. 5. (a) Section 2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 2212. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 290 of the Penal Code, and (3) AB 1008 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2212, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 290

of the Penal Code proposed by both this bill and AB 1008. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 290 of the Penal Code, (3) AB 2212 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1008 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 2212, and AB 1008. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 290 of the Penal Code, (3) this bill is enacted after AB 2212 and AB 1008, in which case Sections 1, 2, and 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 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.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1408

An act to add Section 17730.3 to the Education Code relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 17730.3 is added to the Education Code, to read:

17730.3. Notwithstanding any other provision of this chapter, any project funded under this chapter that involves only the identification, assessment, or abatement of hazardous asbestos in school facilities shall not be subject to Section 17705.5, 17714, or 17732,

nor shall that funding cause the transfer to the state of title or any other property interest in the subject facilities.

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 make certain revisions to state law that are necessary with regard to school asbestos abatement projects that have been approved by the State Allocation Board and are currently awaiting the disbursement of state funding, it is necessary that this act take effect immediately.

CHAPTER 1409

An act to amend Section 546 of the Code of Civil Procedure, and to add Section 213.5 to the Welfare and Institutions Code, relating to court orders.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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 second day of judicial business

following the day of its 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.

(c) A judge, commissioner, or referee designated pursuant to subdivision (b) may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate and present danger of abuse by a family or household member, based upon an 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 authorized in Section 213.5 of the Welfare and Institutions Code, and may include provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or legal guardian of the endangered child who is not a restrained party. The order shall expire not later than the close of judicial business on the second day of judicial business following the day of its issue. 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 a child is in immediate and present danger of abuse and that an emergency protective order is necessary to prevent the occurrence or recurrence of abuse. 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 child resides.

(4) The following statement: "This order will last only until the date and time noted above. A more permanent restraining order under Section 213.5 of the Welfare and Institutions Code may be applied for from the court, at the address noted above, when it opens. The advice of an attorney may be sought in connection with the application for a more permanent restraining order."

The parent or legal guardian of the endangered child who is not a restrained party, or any person having temporary custody of the endangered child, may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code when the court opens.

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 any parent or legal guardian of the endangered child who is not a restrained party, if he or she can be reasonably located, or to any person having temporary custody of the endangered child. A copy also shall be filed with the court as soon as practicable after issuance.

The availability of an emergency protective order shall not be affected by the endangered child's leaving 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. 1.5. 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 or a peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, 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 or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, 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 second day of judicial business following the day of its 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 or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer or peace officer of the Department of Parks and Recreation, as defined in subdivision (h) of Section 830.2 of the Penal Code, 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.

(c) A judge, commissioner, or referee designated pursuant to subdivision (b) may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a child is in immediate and present danger of abuse by a family or household member, based upon an 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 authorized in Section 213.5 of the Welfare and Institutions Code, and may include provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or legal guardian of the endangered child who is not a restrained party. The order shall expire not later than the close of judicial business on the second day of judicial business following the day of its issue. 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 a child is in immediate and present danger of abuse and that an emergency protective order is necessary to prevent the occurrence or recurrence of abuse. 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 child resides.

(4) The following statement: "This order will last only until the date and time noted above. A more permanent restraining order under Section 213.5 of the Welfare and Institutions Code may be applied for from the court, at the address noted above, when it opens. The advice of an attorney may be sought in connection with the application for a more permanent restraining order."

The parent or legal guardian of the endangered child who is not a restrained party, or any person having temporary custody of the endangered child, may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code when the court opens.

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 any parent or legal guardian of the endangered child who is not a restrained party, if he or she can be reasonably located, or to any person having temporary custody of the endangered child. A copy also shall be filed with the court as soon as practicable after issuance.

The availability of an emergency protective order shall not be affected by the endangered child's leaving 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. Section 213.5 is added to the Welfare and Institutions Code, to read:

213.5. (a) During the pendency of any proceeding to declare a minor child a dependent child of the juvenile court, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or member of the minor child's household from molesting, attacking, striking, sexually assaulting, or battering the minor child or any other minor child in the household; (2) excluding any parent, guardian, or member of the minor child's household from the dwelling of the person who has care, custody, and control of the child upon the same showing as is necessary under the provisions of this chapter relating to dependent children to remove a minor from the custody and control of his or her parents or guardians; and (3) enjoining a parent, guardian, or member of the minor child's household from specified behavior including contacting, threatening, or disturbing the peace of the minor, which the court determines is necessary to effectuate orders under paragraph (1) or (2). In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this statute may be held simultaneously with the regularly scheduled hearings held in proceedings to declare a minor

a dependent child of the juvenile court pursuant to Section 300.

(b) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivision (a). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(c) The juvenile court may issue an order made pursuant to subdivision (a) or (b) excluding a person from a residence or dwelling only when the evidence affirmatively shows facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

In the case of the issuance of an ex parte order, the affidavit in support of the application for the order shall affirmatively show facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

(d) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(e) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a) or (b), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the minor child and such other locations where the court determines that acts of domestic violence or abuse against the minor child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a) or (b) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(f) Any willful and knowing violation of any order granted pursuant to subdivision (a) or (b) shall be a misdemeanor punishable under Section 273.6 of the Penal Code.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 546 of the Code of Civil Procedure proposed by both this bill and AB 2089. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 546 of the Code of Civil Procedure, and (3) this bill is enacted after AB 2089, in which case Section 1 of this bill shall not become operative.

SEC. 4. 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.

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.

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

CHAPTER 1410

An act to amend Section 5813.5 of the Corporations Code, relating to corporations.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 5813.5 of the Corporations Code is amended to read:

5813.5. (a) A public benefit corporation may amend its articles to change its status to that of a mutual benefit corporation, a religious corporation, a business corporation, or a cooperative corporation by complying with this section and the other sections of this chapter.

The Secretary of State shall notify the Franchise Tax Board, in the manner and at the times agreed upon by the Secretary of State and the Franchise Tax Board, of any amendments to a public benefit corporation's articles.

(b) If the public benefit corporation has any assets, an amendment to change its status to a mutual benefit corporation, business corporation, or cooperative corporation shall be approved in advance in writing by the Attorney General. If the public benefit corporation has no assets, the Attorney General shall be given a copy of the amendment at least 20 days before the amendment is filed.

(c) Amended articles authorized by this section shall include the provisions which would have been required (other than the name of the initial agent for service of process if a statement has been filed pursuant to Section 6210), and may in addition only include those provisions which would have been permitted, in original articles filed by the type of corporation (mutual benefit, religious, business, or cooperative) into which the public benefit corporation is changing its status.

(d) In the case of a change of status to a business corporation or cooperative corporation, if the Franchise Tax Board has issued a determination exempting the corporation from tax as provided in

Section 23701 of the Revenue and Taxation Code, the corporation shall be subject to Section 23221 of the Revenue and Taxation Code upon filing the certificate of amendment.

CHAPTER 1411

An act to amend Sections 25113, 25117, 25189.5, and 25191 of the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Section 25113 of the Health and Safety Code is amended to read:

25113. "Disposal" means the abandonment, discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent of the waste, may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

SEC. 2. Section 25117 of the Health and Safety Code is amended to read:

25117. (a) "Hazardous waste" means any of the following:

(1) A waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may either:

(A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(B) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(2) A waste which meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141.

(b) Unless expressly provided otherwise, "hazardous waste" also includes extremely hazardous waste and acutely hazardous waste.

SEC. 3. Section 25189.5 of the Health and Safety Code is amended to read:

25189.5. (a) The disposal of any hazardous waste, or the causing thereof, is prohibited when the disposal is at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter.

(b) Any person who is convicted of knowingly disposing or causing the disposal of any hazardous waste, or who reasonably should have known that he or she was disposing or causing the

disposal of any hazardous waste, at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 24, or 36 months.

(c) Any person who knowingly transports or causes the transportation of hazardous waste, or who reasonably should have known that he or she was causing the transportation of any hazardous waste, to a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 24, or 36 months.

(d) Any person who knowingly treats or stores any hazardous waste at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 24, or 36 months.

(e) The court shall also impose upon a person convicted of violating subdivision (b), (c), or (d) a fine of not less than five thousand dollars ($5,000) or more than one hundred thousand dollars ($100,000) for each day of violation except as further provided in this subdivision. If the act which violated subdivision (b), (c), or (d) caused great bodily injury or caused a substantial probability that death could result, the person convicted of violating subdivision (b), (c), or (d) may be punished by imprisonment in the state prison for up to 36 months, in addition to the term specified in subdivision (b), (c), or (d), and may be fined up to two hundred fifty thousand dollars ($250,000) for each day of violation.

SEC. 4. Section 25191 of the Health and Safety Code is amended to read:

25191. (a) Any person who knowingly does any of the following acts shall, upon conviction, be punished by a fine of not less than two thousand dollars ($2,000) or more than twenty-five thousand dollars ($25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison for 16, 20, or 24 months, or in the county jail for not more than one year, or by a fine of not less than two thousand dollars ($2,000) or more than fifty thousand dollars ($50,000) for each day of violation, or by both the fine and imprisonment:

(1) Makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for the purposes of compliance

with this chapter.

(2) Has in his or her possession any record relating to the generation, storage, treatment, transportation, disposal, or handling of hazardous waste required to be maintained pursuant to this chapter, that has been altered or concealed, whether altered or concealed prior to January 1, 1982.

(3) Destroys, alters, or conceals any record relating to the generation, storage, treatment, transportation, disposal, or handling of hazardous waste required to be maintained pursuant to this chapter.

(4) Withholds information regarding a real and substantial danger to the public health or safety when such information has been requested by the department and is required to carry out the department's responsibilities pursuant to this chapter in response to a real and substantial danger.

(5) Except as otherwise provided in this chapter, engages in transportation of hazardous waste in violation of Section 25160 or 25161, or subdivision (a) or (e) of Section 25163, or in violation of any regulation adopted by the department pursuant to those sections, including, but not limited to, failing to complete or provide the manifest in the form and manner required by the department.

(6) Except as otherwise provided in this chapter, produces, receives, stores, or disposes of hazardous waste, or submits hazardous waste for transportation, in violation of Section 25160 or 25161 or any regulation adopted by the department pursuant to those sections, including, but not limited to, failing to complete, provide, or submit the manifest in the form and manner required by the department.

(7) Transports any waste, for which there is provided a manifest, if the transportation is in violation of this chapter or the regulations adopted by the department pursuant thereto.

(8) Violates Section 25162.

(b) The penalties imposed by subdivision (a) on any person who commits any of the acts specified in paragraph (5), (7), or (8) of that subdivision shall be imposed only (1) on the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled or (2) on the person who authorizes or causes the transporting, carrying, or handling. These penalties shall not be imposed on the driver of the vehicle, unless the driver is also the owner or lessee of the vehicle or authorized or caused the transporting, carrying, or handling.

If any person other than the person producing the hazardous waste prepares the manifest specified in Section 25160, that other person is also subject to the penalties imposed on a person who commits any of the acts specified in paragraph (6) of subdivision (a).

(c) Any person who knowingly does any of the following acts shall, upon conviction, be punished by a fine of not more than five hundred dollars ($500) for each day of violation, or by imprisonment in the county jail for not to exceed six months, or both the fine and imprisonment. Each day or partial day that a violation occurs is a

separate violation:

(1) Transports, or authorizes the transportation of, hazardous waste in a truck, trailer, semitrailer, vacuum tank, cargo tank, or container which does not contain a current certificate of compliance, as specified in Section 25168.3.

(2) Carries or handles, or authorizes the carrying or handling of, a hazardous waste without having in the driver's possession the manifest specified in Section 25160.

(3) Transports, or authorizes the transportation of, hazardous waste without having in the driver's possession a valid registration issued by the department pursuant to Section 25163.

(d) Whenever any person is prosecuted for a violation pursuant to paragraph (5), (6), (7), or (8) of subdivision (a), subdivision (c), or subdivision (c) of Section 25189.5, the prosecuting attorney may take appropriate steps to make the owner or lessee of the vehicle in which the hazardous wastes are unlawfully transported, carried, or handled, the driver of the vehicle, or any other person who authorized or directed the loading, maintenance, or operation of the vehicle, who is reasonably believed to have violated these provisions, a codefendant. If a codefendant is held solely responsible and found guilty, the court may dismiss the charge against the person who was initially so charged.

SEC. 5. Sections 1 and 2 of this act shall not become operative if Assembly Bill 1847 is enacted and becomes effective on or before January 1, 1990, and amends Sections 25113 and 25117 of the Health and Safety Code.

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

SEC. 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 include, at the earliest time possible, the mismanagement of hazardous waste within the provisions imposing penalties upon persons who take these actions, thereby protecting public health and safety and the environment, it is necessary that this act take effect immediately

CHAPTER 1412

An act to amend Sections 4525, 4526, 4527, 4528, 14133, and 14134 of the Government Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. 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, environmental services, land surveying, or construction project management.

(b) "State 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, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "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.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

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, environmental services, land surveying, or construction project management.

(b) "State agency head" means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, engineering, environmental, land surveying, and construction project management services.

(c) "Local agency head" means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, engineering, environmental, land surveying, and construction project management services.

(d) "Architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) "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.

(f) "Environmental services" means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

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 selection by a state or local agency head for professional services of private architect, engineering, environmental, 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. State agency heads contracting for private architectural, professional engineering, environmental, 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.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a

relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

SEC. 4. Section 4526 of the Government Code is amended to read:

4526. Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, engineering, environmental, 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. In order to implement this method of selection, state agency heads contracting for private architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, 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.

In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

SEC. 5. Section 4527 of the Government Code is amended to read:

4527. In the procurement of architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, engineering, environmental, 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.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

SEC. 6. Section 4528 of the Government Code is amended to read:

4528. (a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state 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 state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state 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.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

SEC. 7. Section 14133 of the Government Code is amended to read:

14133. (a) Contracts made pursuant to this article are not subject to Article 4 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5.

(b) Contracts for engineering, architectural, or environmental services made pursuant to this article are subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1.

Notwithstanding Section 10295 of the Public Contract Code, the determination as to whether the guidelines for contracting adopted pursuant to Section 14134 have been met shall be the sole responsibility of the Director of Transportation. The Department of General Services shall have 30 working days upon receipt of a contract under this article in which to act on the contract, except in cases where further clarification is required by the department to execute the contract.

SEC. 8. Section 14134 of the Government Code is amended to read:

14134. (a) The department, after consultation with the commission and local transportation agencies, shall adopt guidelines for determining the appropriateness of contracting with private firms or on projects developed cooperatively with local jurisdictions. The guidelines shall include, but not be limited to, consideration of the following:

(1) Ensuring that all available federal, state, and local funds, including supplemental federal funds, are captured and used in a timely manner.

(2) Reducing short-term fluctuations in the department's project development workload while still enabling the department to be plan-ready.

(3) Facilitating the expeditious use of locally raised funds for state highway projects, recognizing that, in this instance, local governments are partners in state highway construction and that locally financed projects should not be unnecessarily delayed.

(4) Ensuring that the cost effectiveness of contracting is considered equally with other factors when a determination of the appropriateness of contracting is made.

(5) Ensuring that contract selection is performed in accordance with applicable state laws regarding the selection of professional architectural, engineering, environmental, or land surveying services, and to ensure the selection process avoids or prohibits unlawful or unfair procedures or activities.

(b) These guidelines shall serve as general criteria for the determination of the appropriateness of contracting for project development services and shall not be deemed to require the department to contract for specific projects solely because they may meet these criteria.

(c) The department may contract with local jurisdictions, rather than with private firms, for professional and technical project development services. In such a case, the services shall be only for a project located within the area of the local jurisdiction.

SEC. 9. Section 2 of this bill incorporates amendments to Section 4525 of the Government Code proposed by both this bill and SB 1224. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 4525 of the Government Code, and (3) this bill is enacted after SB 1224, in which case Section

4525 of the Government Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 1224, at which time Section 2 of this bill shall become operative.

SEC. 10. Section 4 of this bill incorporates amendments to Section 4526 of the Government Code proposed by both this bill and SB 419. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1989, but this bill becomes operative first, (2) each bill amends Section 4526 of the Government Code, and (3) this bill is enacted after SB 419, in which case Section 4526 of the Government Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of SB 419, at which time Section 4 of this bill shall become operative.

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 permit state agencies to contract for environmental services using the same process as that used for architectural and engineering services as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1413

An act to add Section 15819.22 to the Government Code, relating to correctional facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 15819.22 is added to the Government Code, to read:

15819.22. (a) The necessary funding for the construction of the California State Prison-Imperial County authorized by Chapter 1220 of the Statutes of 1988 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-Imperial County.

(2) Notwithstanding the limitation imposed by Section 15819.3 regarding the amount of bonds to be issued for construction, acquisition, and financing of prison facilities, the State Public Works Board may issue additional bonds in order to pay the costs of acquiring and constructing or refinancing the California State Prison-Imperial County.

(b) Notwithstanding Section 13340, funds derived from the lease-purchase financing methods for the California State Prison-Imperial 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.

The sum of one hundred ninety-three million seven hundred thousand dollars ($193,700,000) shall be available for capital outlay for the California State Prison-Imperial County from funds derived from lease-purchase financing methods. This amount shall be available as necessary for 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.

(c) 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. In addition, the State Public Works Board may authorize any additional amounts necessary to pay the costs of financing, including the payment of interest during construction of the project, any additional amount as may be authorized by the board to pay the cost of financing a reserve fund, and the cost of issuance of permanent financing for the project. This additional amount may include interest during acquisition or construction of the facility, interest payable on any interim loan for the facility from the Pooled Money Investment Account pursuant to Section 16312, a reasonably required reserve fund, and the costs of issuance of permanent financing of the facility.

SEC. 2. The sum of one hundred ninety-three million seven hundred thousand dollars ($193,700,000) is hereby appropriated from the 1990 Prison Construction Fund to the Department of Corrections for constructing a 2,000-bed Level IV prison together with a 200-bed service facility in Imperial County as authorized by Chapter 1220 of the Statutes of 1988.

Funds appropriated by 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, and long lead and equipment items. However, of the amounts appropriated in this section and in Section 15819.22 of the Government Code, not more than the total amount of one hundred ninety-three million seven hundred thousand dollars ($193,700,000) shall be available for the California State Prison-Imperial County for the purposes specified in subdivision (b) of Section 15819.22 of the Government Code Funds appropriated by this section 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 15819.22 of the Government Code.

SEC. 3. The Department of Corrections is hereby authorized to construct and establish a 2,000-bed Level III prison, together with a 200-bed Level I support services facility, in Imperial County. The Department of Corrections shall prepare an environmental impact report studying two or more sites for this project.

SEC. 4. The sum of ten million dollars ($10,000,000) is hereby appropriated from the 1988 Prison Construction Fund to the Department of Corrections for the 2,000-bed Level III prison, together with the 200-bed support services facility, authorized by Section 3 of this act.

Funds appropriated by 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, and working drawings.

SEC. 5. (a) The Department of Corrections shall establish for correctional facilities financed by this act, an annual goal of 20 percent for the employment of minorities, women, and persons with disabilities who are residents of the Imperial Valley and an annual goal of an additional 20 percent for the employment of residents of the Imperial Valley, thereby establishing a cumulative goal of 40 percent for the employment of residents of the Imperial Valley at these facilities. For purposes of this section, "minority" has the definition specified in subdivision (d) of Section 10115.1 of the Public Contract Code.

(b) The department shall establish outreach programs, such as workshops and seminars, to maximize the participation of businesses and professionals located in the Imperial Valley in the design, construction, and maintenance of the facilities financed by this act, and to promote the employment of residents of the Imperial Valley at these facilities.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The state prison system is currently overcrowded and is expected to become overpopulated to the point that the state will face a public safety crisis. The prison population increased during the last year at an average rate of more than 200 inmates each week. Most of these inmates were sent to prison because they committed violent crimes. The Legislature and the people of this state have determined that immediate expansion of the prison system by the swiftest possible means is necessary to relieve the system from current and anticipated overcrowding and to maintain the public safety and security. In order to permit the state to deal with this immediate and current crisis at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 1414

An act to amend Sections 41980 and 41982 of the Education Code, relating to education.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 41980 of the Education Code is amended to read:

41980. (a) Any separate joint powers entity formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code that has as its sole function the provision of school transportation services may, subject to prior approval by the Superintendent of Public Instruction, be designated a single school district for purposes of receiving state apportionments or allowances in support of those services or programs. Those school transportation apportionments or allowances shall be allocated to a separate joint powers entity under this section in any fiscal year only to the extent that the governing board of the school district or districts that would otherwise receive those state apportionments or allowances expressly approves that allocation under a resolution adopted on or before June 30 preceding that fiscal year.

(b) Any separate joint powers entity formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code that has as its sole function the provision of school food services may, subject to prior approval by the Superintendent of Public Instruction, be designated a single school district for purposes of receiving state apportionments or allowances in support of those services or programs. Those school food apportionments or allowances shall be allocated to a separate joint powers entity under this section in any fiscal year only to the extent that the governing board of the school district or districts that would otherwise receive those state apportionments or allowances expressly approves that allocation under a resolution adopted on or before June 30 preceding that fiscal year.

SEC. 2. Section 41982 of the Education Code is amended to read:

41982. The joint powers entity shall be subject to the same budget, expenditure, appropriation, accounting, auditing, and program requirements as school districts and county superintendents of schools generally with respect to school transportation programs and food services programs. Employees of the Newhall School District, the William S. Hart Union High School District, the Sulphur Springs Union School District, the Saugus Union School District, or the Castaic Union School District who become employees of a joint powers entity that has as its sole function the provision of school food services, pursuant to the participation of

their respective schools in the joint powers entity, shall be entitled to carry over their seniority upon transfer to the joint powers entity.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of unique circumstances. The Legislature finds, therefore, that this special act is necessary. The facts constituting this necessity are:

This act is necessary in order to ensure that employees of the Newhall School District, the William S. Hart Union High School District, the Sulphur Springs Union School District, the Saugus Union School District, or the Castaic Union School District who transfer to a joint powers entity established by these participating school districts for the sole function of providing school food services, shall be entitled to carry over their seniority upon that transfer.

CHAPTER 1415

An act to amend Section 68843 of, to add Section 68211 to, and to repeal Sections 68840 and 68841 of, the Government Code, relating to courts.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 68211 is added to the Government Code, to read:

68211. Each judge of the Supreme Court and the courts of appeal shall receive the same group term life insurance benefit as is granted to other constitutional officers and state managerial employees. The Administrative Office of the Courts shall administer the insurance benefit.

SEC. 2. Section 68840 of the Government Code is repealed.

SEC. 3. Section 68841 of the Government Code is repealed.

SEC. 4. Section 68843 of the Government Code is amended to read:

68843. The Supreme Court shall appoint a clerk, who shall be known as the Clerk/Administrator of the Supreme Court, and who shall serve at its pleasure. The Clerk/Administrator of the Supreme Court, with the approval of a majority of the Justices of the Supreme Court, shall appoint such deputy clerks, librarians, secretaries, and other employees of the Supreme Court as are required. The Supreme Court shall determine the duties and, subject to subdivision (b) of Section 19825, fix and pay the compensation of these officers.

CHAPTER 1416

An act to amend Sections 6200, 6201, 6203, and 6205 of the Business and Professions Code, to amend Section 1917.003 of the Civil Code, to amend Sections 117.8, 117.10, 214, 231, 232, 396b, 400, 404.6, 409.4, 415.20, 437c, 472a, 550, 575.1, 659a, 686.020, 695.070, 701.680, 706.101, 904.1, 1033.5, 1038, 1987, 2025, and 2029 of the Code of Civil Procedure, to amend Section 1562 of the Evidence Code, to amend Sections 6159, 27282, 68070.1, 68072, 68097.2, and 68501 of the Government Code, and to amend Sections 894 and 903 of the Penal Code, relating to judicial proceedings.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 6200 of the Business and Professions Code is amended to read:

6200. (a) The board of governors shall, by rule, establish, maintain, and administer a system and procedure for the arbitration of disputes concerning fees, costs, or both, charged for professional services by members of the State Bar or by members of the bar of other jurisdictions. The rules may include provision for a filing fee in such amount as the board may, from time to time, determine.

(b) This article shall not apply to any of the following:

(1) Disputes where the attorney is also admitted to practice in another state, and he or she maintains no office in the State of California, and no material portion of the services were rendered in the State of California.

(2) Claims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct, except as provided in subdivision (a) of Section 6203.

(3) Disputes where the fee or cost to be paid by the client or on his or her behalf has been determined pursuant to statute or court order.

(c) Arbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client.

(d) The board of governors shall adopt rules to allow arbitration of attorney fee and cost disputes under this article to proceed under arbitration systems sponsored by local bar associations in this state. Rules of procedure promulgated by local bar associations are subject to review by the board to insure that they provide for a fair, impartial, and speedy hearing and award. In adopting or reviewing these rules, the board may provide for one lay member of any arbitration panel of three arbitrators.

(e) In any arbitration conducted pursuant to this article by the State Bar or by a local bar association, pursuant to rules of procedure approved by the board of governors, the arbitrator or arbitrators, as

well as the arbitrating association and its directors, officers, and employees, shall have the same immunity which attaches in judicial proceedings.

(f) In the conduct of arbitrations under this article the arbitrator or arbitrators may do all of the following:

(1) Take and hear evidence pertaining to the proceeding.

(2) Administer oaths and affirmations.

(3) Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.

SEC. 2. Section 6201 of the Business and Professions Code is amended to read:

6201. (a) The rules adopted by the board of governors shall provide that, except as to an action filed in small claims court, an attorney shall forward a written notice to the client prior to or at the time of service of summons in an action against the client for recovery of fees, costs, or both, covered by the provisions of this article. The written notice shall be in such form as the board of governors may prescribe, but shall include a statement of the client's right to arbitration under this article. Failure to give this notice shall be a ground for the dismissal of the action.

The rules adopted by the board of governors shall provide that the client's failure to request arbitration within 30 days after receipt of notice from the attorney shall be deemed a waiver of the client's right to arbitration under the provisions of this article.

(b) If an attorney, or the attorney's assignee, subject to the provisions of this article, commences an action in any court, other than a small claims court, and the dispute is not one to which subdivision (b) of Section 6200 applies, the client may stay the action by serving and filing a request for arbitration in accordance with the rules established by the board of governors pursuant to subdivision (a) of Section 6200. If the attorney files an action against the client in small claims court for recovery of fees, costs, or both, covered by the provisions of this article, the small claims action, including any appeal, shall not be stayed under the provisions of this section, and the matter shall not be subject to arbitration under this article while the matter is pending in small claims court or after judgment is given in that court. The request for arbitration shall be served and filed prior to the filing of an answer in the action; failure to so request arbitration prior to the filing of an answer shall be deemed a waiver of the client's right to arbitration under the provisions of this article if notice of the client's right to arbitration was given pursuant to subdivision (a).

(c) Upon filing and service of the request for arbitration, the action shall be stayed, without the necessity of court order, until the award of the arbitrators is issued or the arbitration is otherwise terminated. The stay may be vacated in whole or in part, after a hearing duly noticed by any party or the court, if the court finds that the matter, or any part of it, is not an appropriate one for arbitration

under the provisions of this article. The action may thereafter proceed subject to the provisions of Section 6204.

(d) A client's right to request or maintain arbitration under the provisions of this article is waived by (1) the commencement of an action or the filing of any pleading by the client seeking judicial resolution of a dispute to which this article applies, or (2) seeking affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct.

SEC. 3. Section 6203 of the Business and Professions Code is amended to read:

6203. (a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

The arbitrators may receive evidence relating to claims of malpractice and professional misconduct, but only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying any such claim. Nothing in this section shall be construed to prevent the arbitrators from awarding a refund of unearned prepaid fees.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after mailing of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure, otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) A court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs including, if applicable, fees or costs on appeal, incurred in obtaining confirmation, correction, or vacation of the award. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the

rules adopted by the board of governors, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

SEC. 4. Section 6205 of the Business and Professions Code is amended to read:

6205. The procedures provided for in this article shall apply to disputes concerning fees, costs, or both, charged for professional services rendered on and after the date this article becomes effective.

SEC. 5. Section 1917.003 of the Civil Code is amended to read:

1917.003. The lien or liens of a deed or deeds of trust securing a shared appreciation loan shall include and secure the principal amount of the shared appreciation loan, and all interest, whether accrued or to be accrued, including all amounts of contingent deferred interest.

SEC. 6. Section 117.8 of the Code of Civil Procedure is amended to read:

117.8. (a) Except as hereinafter provided, the judgment shall be conclusive upon the plaintiff. If the plaintiff failed to appear and judgment against the plaintiff was entered, the plaintiff may file within 30 days after the clerk has mailed by first-class mail, notice of entry of judgment, a motion to vacate the judgment. Upon a showing of good cause, the court may grant the motion, and if all parties are present, and agree, may hear the matter without recalendaring. If the defendant is not present, the judge shall hear the motion in his or her absence. If the motion is granted, the judge or clerk shall reset the matter and notice it in accordance with Section 116.4.

(b) The defendant with respect to the plaintiff's claim, or the plaintiff with respect to a claim of defendant, may appeal the judgment to the superior court in the county in which the matter was heard.

(c) If the defendant did not appear at the hearing in the small claims court, as a prerequisite to appeal, the defendant shall have (1) filed, within 30 days after the clerk has mailed by first-class mail notice of entry of judgment, a motion in the small claims court to vacate the judgment, and (2) appeared at any hearing on the motion, or have submitted written justification for not appearing at such hearing and written evidence in support of the motion. In addition the court must have denied or failed to decide the motion within 60 days after it was filed.

(d) If the defendant appeared at the hearing in the small claims court on the motion to vacate the judgment, or has submitted a written justification for not appearing and written evidence in support of the motion, and the motion was denied or not decided within 60 days, the defendant may appeal to the superior court only as to the denial of the motion to vacate the judgment. If the superior court finds that the defendant's motion to vacate the judgment should have been granted, the superior court may hear the defendant's appeal without recalendaring the matter, provided the

defendant has previously complied with the practice and procedure established pursuant to Section 117.10.

(e) If the defendant was not properly served pursuant to Section 116.4 and did not appear at the hearing in the small claims court, the defendant may move to vacate the judgment within 180 days after he or she discovers or should have discovered that judgment was entered against him or her. Such motion shall be supported by declaration under penalty of perjury. The court may stay enforcement of the judgment pending a hearing and determination of the motion. The notice of motion and supporting declaration shall be on simple nontechnical forms approved or adopted by the Judicial Council.

SEC. 7. Section 117.10 of the Code of Civil Procedure is amended to read:

117.10. On appeal the claims of all parties shall be tried anew. The Judicial Council shall prescribe by rule the practice and procedure on appeal and the time and manner in which the record on appeal shall be prepared and filed. Such rules shall be consistent with subdivisions (a) and (b) of Section 117.8. The appellant shall pay the same filing fee as for the appeal of a civil action from a justice court. No fee shall be charged to the plaintiff in the small claims action for the filing of any documents in the superior court.

SEC. 8. Section 214 of the Code of Civil Procedure is amended to read·

214. The jury commissioner shall provide orientation for new jurors, which shall include necessary basic information concerning jury service. The jury commissioner shall notify each juror of the provisions of Section 230 of the Labor Code.

SEC 9. Section 231 of the Code of Civil Procedure is amended to read:

231. (a) In criminal cases, if the offense charged is punishable with death, or with imprisonment in the state prison for life, the defendant is entitled to 20 and the people to 20 peremptory challenges. Except as provided in subdivision (b), in a trial for any other offense, the defendant is entitled to 10 and the state to 10 peremptory challenges. When two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to five additional challenges which may be exercised separately, and the people shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(b) If the offense charged is punishable with a maximum term of imprisonment of 90 days or less, the defendant is entitled to six and the state to six peremptory challenges. When two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall also be entitled to four additional challenges which may be exercised separately, and the state shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed the defendants.

(c) In civil cases, each party shall be entitled to six peremptory challenges. If there are more than two parties, the court shall, for the purpose of allotting peremptory challenges, divide the parties into two or more sides according to their respective interests in the issues. Each side shall be entitled to eight peremptory challenges. If there are several parties on a side, the court shall divide the challenges among them as nearly equally as possible. If there are more than two sides, the court shall grant such additional peremptory challenges to a side as the interests of justice may require; provided that the peremptory challenges of one side shall not exceed the aggregate number of peremptory challenges of all other sides. If any party on a side does not use his or her full share of peremptory challenges, the unused challenges may be used by the other party or parties on the same side.

(d) Peremptory challenges shall be taken or passed by the sides alternately, commencing with the plaintiff or people; and each party shall be entitled to have the panel full before exercising any peremptory challenge. When each side passes consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge.

(e) If all the parties on both sides pass consecutively, the jury shall then be sworn, unless the court, for good cause, shall otherwise order. The number of peremptory challenges remaining with a side shall not be diminished by any passing of a peremptory challenge.

SEC. 10. Section 232 of the Code of Civil Procedure is amended to read:

232. (a) Prior to the examination of prospective trial jurors in the panel assigned for voir dire, the following perjury acknowledgement and agreement shall be obtained from the panel, which shall be acknowledged by the prospective jurors with the statement "I do":

"Do you, and each of you, understand and agree that you will accurately and truthfully answer, under penalty of perjury, all questions propounded to you concerning your qualifications and competency to serve as a trial juror in the matter pending before this court; and that failure to do so may subject you to criminal prosecution."

(b) As soon as the selection of the trial jury is completed, the following acknowledgment and agreement shall be obtained from the trial jurors, which shall be acknowledged by the statement "I do":

"Do you and each of you understand and agree that you will well and truly try the cause now pending before this court, and a true verdict render according only to the evidence presented to you and to the instructions of the court."

SEC. 11. Section 396b of the Code of Civil Procedure is amended to read:

396b. (a) Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the

proper court for the trial thereof, under the provisions of this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, or with the judge if there is no clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court.

(b) In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees shall be the personal liability of the attorney not chargeable to the party. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after opportunity to be heard.

(c) The court in a proceeding for dissolution of marriage or legal separation, may, prior to the determination of the motion to transfer, consider and determine motions for allowance of temporary alimony, support of children, counsel fees and costs, and make all necessary and proper orders in connection therewith.

(d) In any case, if an answer is filed, the court may consider opposition to the motion to transfer, if any, and may retain the action in the county where commenced if it appears that the convenience of the witnesses or the ends of justice will thereby be promoted.

(e) If the motion to transfer is denied, the court shall allow the defendant time to move to strike, demur, or otherwise plead if the defendant has not previously filed a response.

SEC. 12. Section 400 of the Code of Civil Procedure is amended to read:

400. When an order is made by the superior court granting or denying a motion to change the place of trial, the party aggrieved by such order may, within 20 days after service of a written notice of the order, petition the court of appeal for the district in which the court granting or denying the motion is situated for a writ of mandate requiring trial of the case in the proper court. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10

days. The petitioner shall file a copy of such petition in the trial court immediately after the petition is filed in the court of appeal. The court of appeal may stay all proceedings in the case, pending judgment on the petition becoming final. The clerk of the court of appeal shall file with the clerk of the trial court, a copy of any final order or final judgment immediately after such order or judgment becomes final.

SEC. 13. Section 404.6 of the Code of Civil Procedure is amended to read:

404.6. Within 20 days after service upon him or her of a written notice of entry of an order of the court under this chapter, any party may petition the appropriate reviewing court for a writ of mandate to require the court to make such order as the reviewing court finds appropriate. The superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days.

SEC. 14. Section 409.4 of the Code of Civil Procedure is amended to read:

409.4. An order granting or denying a motion to expunge a notice of pendency of action made pursuant to Section 409.1 or 409.2 shall not be appealable. When that order is made, the party aggrieved by that order may, within the time hereinafter provided, petition the proper reviewing court to review the order by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the order. However, the superior court may, for good cause, and prior to the expiration of the initial 20-day period, extend the time for one additional period not to exceed 10 days. A copy of the petition for writ of mandate shall be delivered to the clerk of the trial court with a request that it be placed in the trial court file

SEC. 15. Section 415.20 of the Code of Civil Procedure is amended to read:

415.20. (a) In lieu of personal delivery of a copy of the summons and of the complaint to the person to be served as specified in Section 416.10, 416.20, 416.30, 416.40, or 416.50, a summons may be served by leaving a copy of the summons and of the complaint during usual office hours in his or her office with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10th day after such mailing.

(b) If a copy of the summons and of the complaint cannot with reasonable diligence be personally delivered to the person to be served as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and of the complaint at such person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent

member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

SEC. 16. Section 437c of the Code of Civil Procedure is amended to read:

437c. (a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense thereto. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at such earlier time after the general appearance as the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 28 days before the time appointed for hearing. However, if the notice is served by mail, the required 28-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b) The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denial of the motion.

Any opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The opposition papers shall include a separate statement which responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts which the opposing party contends are

disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

Any reply to the opposition shall be served and filed by the moving party not less than five days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

Evidentiary objections not made either in writing or orally at the hearing shall be deemed waived.

The provisions of Section 1005 and the provisions of subdivision (a) of Section 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by any person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(e) If a party is otherwise entitled to a summary judgment pursuant to the provisions of this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court, where the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or where a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof.

(f) A party may move for summary adjudication of issues, either by itself or as an alternative to summary judgment. If it appears that the proof supports the granting of the motion for summary adjudication as to some but not all the issues involved in the action, or that one or more of the issues raised by a claim is admitted, or that one or more of the issues raised by a defense is conceded, the court shall, by order, specify that those issues are without substantial controversy. Moreover, upon a motion for summary adjudication, the court shall, by written order or oral order recorded verbatim, specify those issues raised by the motion for summary adjudication as to

which there exists a material, triable controversy, and shall specifically refer to the evidence which establishes a triable issue of fact regarding each of those issues. At the trial of the action the issue so specified shall be deemed established and the action shall proceed as to the issues remaining.

(g) Upon the denial of a motion for summary judgment, on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion as to which the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just.

(i) If the court determines at any time that any of the affidavits are presented in bad faith or solely for purposes of delay, the court shall order the party presenting the affidavits to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after an opportunity to be heard.

(j) Except where a separate judgment may properly be awarded in the action, no final judgment shall be entered on a motion for summary judgment prior to the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding herein provided for.

(k) In actions which arise out of an injury to the person or to property, when a motion for summary judgment was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(*l*) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of any order pursuant to this section except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the

United States, and 20 days if the place of address is outside the United States. The superior court may, for good cause, and prior to the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(m) Nothing in this section shall be construed to extend the period for trial provided by Section 1170.5.

(n) The provisions of subdivisions (a) and (b) shall not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

SEC. 17. Section 472a of the Code of Civil Procedure is amended to read:

472a. (a) A demurrer is not waived by an answer filed at the same time.

(b) Except as otherwise provided by rule adopted by the Judicial Council, when a demurrer to a complaint or to a cross-complaint is overruled and there is no answer filed, the court shall allow an answer to be filed upon such terms as may be just. If a demurrer to the answer is overruled, the action shall proceed as if no demurrer had been interposed, and the facts alleged in the answer shall be considered as denied to the extent mentioned in Section 431.20.

(c) When a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed. When a demurrer is stricken pursuant to Section 436 and there is no answer filed, the court shall allow an answer to be filed on terms that are just.

(d) When a motion to strike is granted pursuant to Section 436, the court may order that an amendment or amended pleading be filed upon terms it deems proper. When a motion to strike a complaint or cross-complaint, or portion thereof, is denied, the court shall allow the party filing the motion to strike to file an answer.

SEC. 18. Section 550 of the Code of Civil Procedure is amended to read:

550. The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of any order, or extension, modification or termination thereof granted pursuant to this chapter, by the close of the business day on which the order, extension, modification or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the plaintiff or the attorney for the plaintiff, having jurisdiction over the residence of the plaintiff and such other locations where the court determines that acts of domestic violence against the plaintiff are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms and current status of any order issued pursuant to this chapter to any law enforcement officer responding to the scene of reported domestic violence. Any restraining order against domestic violence issued pursuant to this chapter may, upon request of the plaintiff, be served upon the defendant by any law

enforcement officer who is present at the scene of reported domestic violence involving the parties to the action. The moving party shall provide the officer with an endorsed copy of the order and a proof of service which the officer shall complete and transmit to the issuing court

SEC. 19 Section 575.1 of the Code of Civil Procedure is amended to read:

575.1. (a) The presiding judge of each superior court may prepare with the assistance of appropriate committees of the court, proposed local rules designed to expedite and facilitate the business of the court. The rules need not be limited to those actions on the civil active list, but may provide for the supervision and judicial management of actions from the date they are filed. Rules prepared pursuant to this section shall be submitted for consideration to the judges of the court and, upon approval by a majority of the judges, the judges shall have the proposed rules published and submitted to the local bar for consideration and recommendations.

(b) After a majority of the judges have officially adopted the rules, 61 copies shall be filed with the Judicial Council as required by Section 68071 of the Government Code. The Judicial Council shall deposit a copy of each rule and amendment with each county law library or county clerk where it shall be made available for public examination The local rules shall also be published for general distribution.

(c) Rules adopted pursuant to this section shall not be inconsistent with law or with the rules adopted and prescribed by the Judicial Council. The clerk of the court may charge a reasonable fee to persons requesting copies of the local rules, to cover the cost of reproduction and distribution.

SEC 20. Section 659a of the Code of Civil Procedure is amended to read:

659a. Within 10 days of filing the notice, the moving party shall serve upon all other parties and file any affidavits intended to be used upon such motion. Such other parties shall have ten days after such service within which to serve upon the moving party and file counter-affidavits. The time herein specified may, for good cause shown by affidavit or by written stipulation of the parties, be extended by any judge for an additional period of not exceeding 20 days.

SEC. 21. Section 686.020 of the Code of Civil Procedure is amended to read:

686.020. After the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor's estate is governed by the Probate Code, and not by this title.

SEC 22. Section 695.070 of the Code of Civil Procedure is amended to read:

695.070. (a) Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property remains subject to the lien after the transfer or encumbrance, the

money judgment may be enforced against the property in the same manner and to the same extent as if it had not been transferred or encumbered.

(b) If the judgment debtor dies after the transfer of property that remains subject to a lien created under this division, the money judgment may be enforced against the property as provided in subdivision (a).

SEC. 23 Section 701.680 of the Code of Civil Procedure is amended to read:

701.680. (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) The judgment debtor, or the judgment debtor's successor in interest, may commence an action within 90 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made. Any liens extinguished by the sale of the property are revived and reattach to the property with the same priority and effect as if the sale had not been made

(2) The judgment debtor, or the judgment debtor's successor in interest, may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

(d) For the purposes of subdivision (c), the purchaser of the property at the sale is not a successor in interest.

SEC. 24. Section 706.101 of the Code of Civil Procedure is amended to read:

706.101. (a) An earnings withholding order shall be served by the levying officer upon the employer by delivery of the order to any of the following:

(1) The managing agent or person in charge, at the time of service, of the branch or office where the employee works or the office from which the employee is paid. In the case of a state employee, the office from which the employee is paid does not include the Controller's office unless the employee works directly for

the Controller's office.

(2) Any person to whom a copy of the summons and of the complaint may be delivered to make service on the employer under Article 4 (commencing with Section 416.10) of Chapter 4 of Title 5.

(b) Service of an earnings withholding order shall be made by personal delivery as provided in Section 415.10 or 415.20 or by delivery by registered or certified mail, postage prepaid, with return receipt requested. When service is made by mail, service is complete at the time the return receipt is executed by or on behalf of the recipient. If the levying officer attempts service by mail under this subdivision and does not receive a return receipt within 15 days from the date of deposit in the mail of the earnings withholding order, the levying officer shall make service as provided in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(c) Except as provided in subdivision (b), service of any notice or document under this chapter may be made by first-class mail, postage prepaid. If service is made on the employer after the employer's return has been received by the levying officer, the service shall be made by first-class mail, postage prepaid, on the person designated in the employer's return to receive notices and at the address indicated in the employer's return, whether or not such address is within the county. Nothing in this subdivision precludes service by personal delivery (1) on the employer before the employer's return has been received by the levying officer or (2) on the person designated in the employer's return after its receipt.

(d) Notwithstanding subdivision (b), if the judgment creditor so requests, the levying officer shall make service of the earnings withholding order by personal delivery as provided in Section 415.10 or 415.20

SEC. 25. Section 904.1 of the Code of Civil Procedure is amended to read:

904.1. An appeal may be taken from a superior court in the following cases.

(a) From a judgment, except (1) an interlocutory judgment, other than as provided in subdivisions (h) and (i), (2) a judgment of contempt which is made final and conclusive by Section 1222, (3) a judgment on appeal from a municipal court or a justice court or a small claims court, or (4) a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition directed to a municipal court or a justice court or the judge or judges thereof which relates to a matter pending in the municipal or justice court. However, an appellate court may, in its discretion, review a judgment granting or denying a petition for issuance of a writ of mandamus or prohibition, or a judgment or order for the payment of monetary sanctions, upon petition for an extraordinary writ.

(b) From an order made after a judgment made appealable by subdivision (a).

(c) From an order granting a motion to quash service of summons or granting a motion to stay or dismiss the action on the ground of

inconvenient forum.

(d) From an order granting a new trial or denying a motion for judgment notwithstanding the verdict.

(e) From an order discharging or refusing to discharge an attachment or granting a right to attach order.

(f) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

(g) From an order appointing a receiver.

(h) From an interlocutory judgment, order, or decree, hereafter made or entered in an action to redeem real or personal property from a mortgage thereof, or a lien thereon, determining the right to redeem and directing an accounting.

(i) From an interlocutory judgment in an action for partition determining the rights and interests of the respective parties and directing partition to be made.

(j) From an order made appealable by the provisions of the Probate Code or the Family Law Act, Part 5 (commencing with Section 4000).

(k) From a superior court judgment directing payment of monetary sanctions by a party or an attorney for a party only if the amount exceeds seven hundred fifty dollars ($750) Lesser sanction judgments against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

SEC. 26. 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. 27. Section 1038 of the Code of Civil Procedure is amended to read:

1038. (a) In any civil proceeding under the California Tort Claims Act or for express or implied indemnity or for contribution in any civil action, the court, upon motion of the defendant or

cross-defendant, shall, at the time of the granting of any summary judgment, motion for directed verdict, motion for judgment under Section 631.8, or any nonsuit dismissing the moving party other than the plaintiff, petitioner, cross-complainant, or intervenor, or at a later time set forth by rule of the Judicial Council adopted under Section 1034 determine whether or not the plaintiff, petitioner, cross-complainant, or intervenor brought the proceeding with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and law which warranted the filing of the complaint, petition, cross-complaint, or complaint in intervention. If the court should determine that the proceeding was not brought in good faith and with reasonable cause, an additional issue shall be decided as to the defense costs reasonably and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party. An award of defense costs under this section shall not be made except on notice contained in a party's papers and an opportunity to be heard.

(b) "Defense costs," as used in this section, shall include reasonable attorneys' fees, expert witness fees, the expense of services of experts, advisers, and consultants in defense of the proceeding, and where reasonably and necessarily incurred in defending the proceeding.

(c) This section shall be applicable only on motion made prior to the discharge of the jury or entry of judgment, and any party requesting the relief pursuant to this section waives any right to seek damages for malicious prosecution. Failure to make the motion shall not be deemed a waiver of the right to pursue a malicious prosecution action.

(d) This section shall only apply if the defendant or cross-defendant has made a motion for summary judgment, judgment under Section 631.8, directed verdict, or nonsuit and the motion is granted.

SEC. 28. Section 1987 of the Code of Civil Procedure is amended to read:

1987 (a) Except as provided in Sections 68097.1 to 68097.8, inclusive, of the Government Code, the service of a subpoena is made by delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to the witness at the same time, if demanded by him or her, the fees to which he or she is entitled for travel to and from the place designated, and one day's attendance there. The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. The service may be made by any person. When service is to be made on 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 12 years of age or older.

(b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, the witness, upon demand, shall be paid witness fees and mileage before being required to testify. The giving of the notice shall have the same effect as service of a subpoena on the witness, and the parties shall have such rights and the court may make such orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court.

(c) If the notice specified in subdivision (b) is served at least 20 days before the time required for attendance, or within such shorter time as the court may order, it may include a request that the party or person bring with him or her books, documents or other things. The notice shall state the exact materials or things desired and that the party or person has them in his or her possession or under his or her control. Within five days thereafter, or such other period as the court may allow, the party or person of whom the request is made may serve written objections to the request or any part thereof, with a statement of grounds. Thereafter, upon noticed motion of the requesting party, accompanied by a showing of good cause and of materiality of the items to the issues, the court may order production of items to which objection was made, unless the objecting party or person establishes good cause for nonproduction or production under limitations or conditions. The procedure of this subdivision is alternative to the procedure provided by Sections 1985 and 1987.5 in the cases herein provided for, and no subpoena duces tecum shall be required.

Subject to this subdivision, the notice herein provided shall have the same effect as is provided in subdivision (b) as to a notice for attendance of that party or person.

SEC. 29. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to the provisions of subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers,

directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office of the organization in California.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more

distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the

one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing

described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose

attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing , and for any editing of the tape.

Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that

unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under

Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record to waive the reading, correcting, and signing of the transcript of the testimony. For 30 days following this notice, the deponent may change the form or the substance of the answer to any question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same 30-day period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition,

accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who received, notice of the deposition may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a

party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 29.5. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to the provisions of subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985 3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audio tape or video tape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*).

(6) Any intention to reserve the right to use at trial a video tape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u) In this event, the

operator of the video tape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office of the organization in California.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party-deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice or, in unlawful detainer actions, not later than five days before trial, whichever is sooner. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a video tape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under

subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audio tape or video tape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the

parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio tape or video tape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audio tape or video tape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio tape or video tape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video tape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audio tape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio tape.

(F) The oath shall be administered to the deponent on camera or on the audio tape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio tape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio tape that the deposition is ended and shall

set forth any stipulations made by counsel concerning the custody of the audio tape or video tape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audio taped or video taped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio taped or video taped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audio tape or video tape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a video tape or an audio tape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is

specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio tape or video tape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audio tape or video tape shall promptly (1) permit that other party to hear the audio tape or to view the video tape, and (2) furnish a copy of the audio tape or video tape to that other party on receipt of payment of the reasonable cost of making that copy of the tape

If the testimony at the deposition is recorded both stenographically, and by audio tape or video tape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record to waive the reading, correcting, and signing of the transcript of the testimony. For 30 days following this notice, the deponent may change the form or the substance of the answer to any question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same 30-day period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript , if the deponent has not already done so at the office of

the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audio tape or video tape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply such signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) The deposition officer shall certify on the transcript of the deposition, or in the writing accompanying an audio taped or video taped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or

recording is a true record of the testimony given and of any changes made by the deponent.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)", and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audio tape or video tape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audio tape or the video tape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audio tape or video tape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audio tape or video tape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who received, notice of the deposition may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined as a result of that person's designation to testify on behalf of an organization under subdivision (d).

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or

represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a video tape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United

States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 30. Section 2029 of the Code of Civil Procedure is amended to read:

2029. Whenever any mandate, writ, letters rogatory, letter of request, or commission is issued out of any court of record in any other state, territory, or district of the United States, or in a foreign nation, or whenever, on notice or agreement, it is required to take the oral or written deposition of a natural person in California, the deponent may be compelled to appear and testify, and to produce documents and things, in the same manner, and by the same process as may be employed for the purpose of taking testimony in actions pending in California.

SEC. 31 Section 1562 of the Evidence Code is amended to read:

1562. If the original records would be admissible in evidence if the custodian had been present and testified to the matters stated in the affidavit, and if the requirements of Section 1271 have been met, the copy of the records is admissible in evidence. The affidavit is admissible as evidence of the matters stated therein pursuant to Section 1561 and the matters so stated are presumed true. When more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established by this section is a presumption affecting the burden of producing evidence.

SEC. 31.5. Section 6159 of the Government Code is amended to read:

6159. (a) As used in this section:

(1) "Credit card" means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) "Card issuer" means any person who issues a credit card and purchases credit card drafts or the agent of such person for such purposes with respect to such card.

(3) "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) "Draft purchaser" means any person who purchases credit card drafts

(b) Subject to the provisions of subdivision (c), a court, city, or other public agency may authorize the acceptance of a credit card for payment for the deposit of bail or for any fine for any offense not declared to be a felony, for payment of a filing fee or other court fee, or for payment of any towage or storage costs for a vehicle which has

been removed from a highway, or from public or private property, as a result of parking violations, or for payment for services rendered by any county or city and county.

(c) A court desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its county board of supervisors. A city desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of the governing body which has fiscal responsibility for such agency. After approval is obtained, a contract may be executed with one or more credit card issuers or draft purchasers. The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer or draft purchaser regarding the presentment, acceptability and payment of credit card drafts;

(2) The establishment of a reasonable means by which to facilitate payment settlements; and

(3) The payment to the card issuer or draft purchaser of a reasonable fee or discount.

(4) Such other matters appropriately included in contracts with respect to the purchase of credit card drafts as may be agreed upon by the parties to the contract.

(d) The honoring of a credit card pursuant to subdivision (b) hereof constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit card is honored provided the credit card draft is paid following its due presentment to a card issuer or draft purchaser.

(e) If any credit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit card shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder shall continue as an outstanding obligation as though no payment had been attempted.

(f) Fees or discounts provided for under paragraph (3) of subdivision (c) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer or draft purchaser.

SEC. 32. Section 27282 of the Government Code is amended to read:

27282. (a) The following documents may be recorded without acknowledgment, certificate of acknowledgment, or further proof:

(1) A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which the judgment was rendered.

(2) A notice of location of mining claim.

(3) Certificates of amounts of taxes, interest and penalties due, notices of state tax liens and extensions thereof executed by the state, county, or city taxing agencies or officials pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, and Sections 2191.3, 2191.4, and 11495 of the Revenue and Taxation Code, and releases, partial releases, and subordinations executed pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, and Sections 2191.4, 11496, 14307, and 14308 of the Revenue and Taxation Code.

(4) Notices of lien for postponed property taxes executed pursuant to Section 16182.

(5) A release, discharge, or subordination of a lien for postponed property taxes as authorized by Chapter 6 (commencing with Section 16180) of Part 1 of Division 4 of Title 2.

(6) A fixture filing as defined by paragraph (b) of subdivision (1) of Section 9313 of the Commercial Code.

(7) An order affecting title to or possession of real property issued by a court in an action subject to Section 12527, authenticated by the certificate of the clerk of the court in which the order was issued or a copy of that order authenticated by a declaration under penalty of perjury by the Attorney General or by an assistant or deputy of the Attorney General attesting that the contents of the copy are the same as the original order issued by the court.

(8) A court certified copy of a satisfaction of judgment.

(b) Any document described in this section, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

SEC. 33. Section 68070.1 of the Government Code is amended to read:

68070.1. (a) Except as otherwise provided in this section, counsel shall have the option of appearing by telephone in any nonevidentiary law and motion and probate hearings and conferences, and every superior court shall provide for appearances of counsel in those hearings and conferences by telephone.

Counsel shall have the option of appearing by telephone in nonevidentiary trial setting conferences in superior courts in counties subject to the Trial Court Delay Reduction Act of 1986 (Article 5 (commencing with Section 68600) of Chapter 2 of Title 8) if the superior court has provided that option by local rule or written local policy.

The Judicial Council may provide, by rule, for the exclusion of specified types of hearings or conferences from this subdivision.

(b) On or before March 1, 1988, the Judicial Council shall establish a pilot project for teleconferencing in nonevidentiary law and motion and probate hearings and conferences in the superior courts in at least 10 counties selected by the Judicial Council. If a pilot project court is not subject to the Trial Court Delay Reduction Act of 1986, it shall also provide teleconferencing in nonevidentiary trial

setting conferences; and all other pilot project courts may provide for teleconferencing in nonevidentiary trial setting conferences by local rule.

(c) The Judicial Council shall adopt model procedures to guide superior courts in the development of teleconferencing procedures.

SEC. 34. Section 68072 of the Government Code is amended to read:

68072. Rules for courts adopted by the Judicial Council or other authority shall take effect on a date to be fixed in the order of adoption. If no effective date is fixed, rules affecting the Supreme Court and courts of appeal shall take effect 60 days after their adoption. Rules affecting the superior courts, the municipal courts, or justice courts shall take effect as provided in Section 68071.

SEC. 35. Section 68097.2 of the Government Code is amended to read:

68097.2. 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, any fireman, any employee of the Department of Forestry who is a forester or fire control member, or any employee of the Department of Justice who is an analyst in a technical field, who is obliged by a subpoena issued pursuant to Section 68097.1 to attend as a witness, shall receive the salary or other compensation to which he is normally entitled from the public entity by which he is employed during the time that he travels to and from the place where the court or other tribunal is located and while he is required to remain at such place pursuant to such subpoena. He shall also receive from the public entity by which he is employed the actual necessary and reasonable traveling expenses incurred by him in complying with such subpoena.

The party at whose request such subpoena is issued shall reimburse the public entity for the full cost to the public entity incurred in paying the officer his or her salary or other compensation and traveling expenses as provided for in this section, for each day that such officer is required to remain in attendance pursuant to such subpoena. The amount of one hundred fifty dollars ($150) shall be deposited with the public entity and proof of that deposit shall be filed with the clerk of the court or with the tribunal prior to the issuance of a subpoena pursuant to this section for each day that such officer is required to remain in attendance pursuant to such subpoena.

If the actual expenses should later prove to be less than the amount deposited, the excess of the amount deposited shall be refunded.

If the actual expenses should later prove to be more than the amount deposited, the difference shall be paid to the public entity by the party at whose request the subpoena is issued.

If a court continues a proceeding on its own motion, no additional deposit may be required prior to the issuance of a subpoena or the making of an order directing such officer to appear on the date to which the proceeding is continued.

SEC. 36. Section 68501 of the Government Code is amended to read:

68501. The chairman of the Judicial Council may appoint committees composed of official court reporters, judges, retired judges, attorneys and experts in specialized fields, or any combination thereof, to advise with the Judicial Council in studying the condition of business in the several courts and the means for simplifying and improving the administration of justice and in the performance of any other duties of the council authorized or imposed by law.

SEC. 37. Section 894 of the Penal Code is amended to read:

894. Sections 204, 218, and 219 of the Code of Civil Procedure specify the exemptions and the excuses which relieve a person from liability to serve as a grand juror.

SEC. 38. 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 195 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. 39. Section 29.5 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and AB 1802. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 2025 of the Code of Civil Procedure, and (3) this bill is enacted after AB 1802, in which case Section 29 of this bill shall not become operative.

SEC. 39.5. The amendment of Section 472a of the Code of Civil Procedure by Section 16 of this act made at the 1989–90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law

SEC. 40. 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 programs specified in this act and because the counties will receive funding therefor pursuant to the Brown-Presley Trial Court Funding Act in lieu of any reimbursement. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1417

An act to amend Sections 167, 170.8, 396b, and 399 of the Code of Civil Procedure, to amend Sections 13967.5, 68080, 68202.5, 71600, 71661, 71661.1, 71662, 71664 5, 72056.1, 75002, 75003, 75004, 75026, 75033.5, 75101, and 75103 of, to amend and repeal Section 71702 of, to add Sections 75029.1, 75029.2, and 75076.2 to, and to repeal Sections 71611, 71612, 71613, 71660, 71664, and 71700 of, the Government Code, to amend Sections 980 and 1164 of the Penal Code, and to amend Sections 1803 and 1803.5 of the Vehicle Code, relating to courts, and making an appropriation therefor.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 167 of the Code of Civil Procedure is amended to read:

167. Any act required or permitted to be performed by the clerk of a court may be performed by a judge thereof.

SEC. 2. Section 170.8 of the Code of Civil Procedure is amended to read:

170.8. When there is no judge of a court qualified to hear an action or proceeding, the clerk shall forthwith notify the Chairman of the Judicial Council of that fact. The judge assigned by the Chairman of the Judicial Council shall hear the action or proceeding at the time fixed therefor or, if no time has been fixed or good cause appears for changing the time theretofore fixed, the judge shall fix a time for hearing in accordance with law and rules and hear the action or proceeding at the time so fixed.

SEC. 3. Section 396b of the Code of Civil Procedure is amended to read:

396b. (a) Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of such papers. Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court.

(b) In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred

in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether such order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, such expenses and fees shall be the personal liability of the attorney not chargeable to the party.

(c) The court in a proceeding for dissolution of marriage or legal separation, may, prior to the determination of the motion to transfer, consider and determine motions for allowance of temporary alimony, support of children, counsel fees and costs, and make all necessary and proper orders in connection therewith.

(d) In any case, if an answer is filed, the court may consider opposition to the motion to transfer, if any, and may retain the action in the county where commenced if it appears that the convenience of the witnesses or the ends of justice will thereby be promoted.

(e) If the motion to transfer is denied, the court shall allow the defendant time to move to strike, demur, or otherwise plead if the defendant has not previously filed a response.

SEC. 3.5. Section 396b of the Code of Civil Procedure is amended to read:

396b. (a) Except as otherwise provided in Section 396a, if an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof, other than the court designated as the proper court for the trial thereof, under this title, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time he or she answers, demurs, or moves to strike, or, at his or her option, without answering, demurring, or moving to strike and within the time otherwise allowed to respond to the complaint, files with the clerk, a notice of motion for an order transferring the action or proceeding to the proper court, together with proof of service, upon the adverse party, of a copy of those papers. Upon the hearing of the motion the court shall, if it appears that the action or proceeding was not commenced in the proper court, order the action or proceeding transferred to the proper court.

(b) In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer whether or not that party is otherwise entitled to recover his or her costs of action. In determining whether that order for expenses and fees shall be made, the court shall take into consideration (1) whether an offer to stipulate to change of venue was reasonably made and rejected, and (2) whether the motion or selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known. As between the party and his or her attorney, those expenses and fees shall be the personal liability

of the attorney not chargeable to the party. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers, or on the court's own noticed motion, and after opportunity to be heard.

(c) The court in a proceeding for dissolution of marriage or legal separation, may, prior to the determination of the motion to transfer, consider and determine motions for allowance of temporary alimony, support of children, counsel fees and costs, and make all necessary and proper orders in connection therewith.

(d) In any case, if an answer is filed, the court may consider opposition to the motion to transfer, if any, and may retain the action in the county where commenced if it appears that the convenience of the witnesses or the ends of justice will thereby be promoted.

(e) If the motion to transfer is denied, the court shall allow the defendant time to move to strike, demur, or otherwise plead if the defendant has not previously filed a response.

SEC. 4. Section 399 of the Code of Civil Procedure is amended to read:

399. When an order is made transferring an action or proceeding under any of the provisions of this title, the clerk shall, after expiration of the time within which a petition for writ of mandate could have been filed pursuant to Section 400, or if such petition is filed after judgment denying the writ becomes final, and upon payment of the costs and fees, transmit the pleadings and papers therein (or if the pleadings be oral a transcript of the same) to the clerk of the court to which the same is transferred. When the transfer is sought on any ground specified in subdivisions 2, 3, 4 and 5 of Section 397, the costs and fees thereof, and of filing the papers in the court to which the transfer is ordered, shall be paid at the time the notice of motion is filed, by the party making the motion for the transfer. When the transfer is sought solely, or is ordered, because the action or proceeding was commenced in a court other than that designated as proper by this title, such costs and fees (including any expenses and attorney's fees awarded defendant pursuant to Section 396b) shall be paid by the plaintiff before such transfer is made; and if, in any such case, the defendant has paid such costs and fees at the time of filing his or her notice of motion, the same shall be repaid to the defendant, upon the making of such order. If such costs and fees have not been so paid by the plaintiff within five days after service of notice of such order, then any other party interested therein, whether named in the complaint as a party or not, may pay such costs and fees, and the clerk shall thereupon transmit the papers and pleadings therein as if such costs and fees had been originally paid by the plaintiff, and the same shall be a proper item of costs of the party so paying the same, recoverable by such party in the event he or she prevails in the action; otherwise, the same shall be offset against and deducted from the amount, if any, awarded the plaintiff in the event the plaintiff prevails against such party in such action. The cause of action shall not be further prosecuted in any court until

such costs and fees are paid. If such costs and fees are not paid within 30 days after service of notice of such order, or if a copy of a petition for writ of mandate pursuant to Section 400 is filed in the trial court, or if an appeal is taken pursuant to Section 904.2 or 904.3, then within 30 days after notice of finality of the order of transfer, the court on a duly noticed motion by any party may dismiss the action without prejudice to the cause on the condition that no other action on the cause may be commenced in another court prior to satisfaction of the court's order for costs and fees. When a petition for writ of mandate or appeal does not result in a stay of proceedings, the time for payment of such costs shall be 60 days after service of the notice of the order.

At the time of transmittal of the papers and pleadings, the clerk shall mail notice to all parties who have appeared in the action or special proceeding, stating the date on which such transmittal occurred. Promptly upon receipt of such papers and pleadings, the clerk of the court to which the action or proceeding is transferred shall mail notice to all parties who have appeared in the action or special proceeding, stating the date of the filing of the case and number assigned to the case in such court.

The court to which an action or proceeding is transferred under this title shall have and exercise over the same the like jurisdiction as if it had been originally commenced therein, all prior proceedings being saved, and such court may require such amendment of the pleadings, the filing and service of such amended, additional, or supplemental pleadings, and the giving of such notice, as may be necessary for the proper presentation and determination of the action or proceeding in such court.

SEC. 5 Section 13967.5 of the Government Code is amended to read:

13967.5 (a) The restitution fine imposed pursuant to subdivision (a) of Section 13967 shall be payable to the clerk of the court, the probation officer, or any other person responsible for the collection of criminal fines. If the defendant is unable or otherwise fails to pay such fine in a felony case and there is an amount unpaid of one thousand dollars ($1,000) or more within 60 days after the imposition of sentence, or in a case in which probation is granted, within the period of probation, the clerk of the court, probation officer, or other person to whom the fine is to be paid shall forward to the Controller the abstract of judgment along with such information which may be relevant to the present and future location of the defendant and his or her assets, if any, and any verifiable amount which the defendant may have paid to the victim as a result of the crime.

(b) A restitution fine shall be deemed a debt of the defendant owing to the state for the purposes of Sections 12418 and 12419.5 of the Government Code, excepting any amounts the defendant has paid to the victim as a result of the crime. Upon request by the Controller, the district attorney of a county or the Attorney General may take any necessary action to recover amounts owing on a

restitution fine. The amount of the recovery shall be increased by a sum sufficient to cover any costs incurred by any state or local agency in the administration of this section. The remedies provided by this subdivision are in addition to any other remedies provided by law for the enforcement of a judgment.

SEC. 6. Section 68080 of the Government Code is amended to read:

68080. The clerk of the court shall keep the seal of the court.

SEC. 7. Section 68202.5 of the Government Code is amended to read:

68202.5. The judge of a full-time justice court shall receive the same salary as a judge of the municipal court. Except as provided in Section 71702, a judge of a part-time justice court shall receive salary equal to the percentage of that amount which equals the proportion of a full-time work week required to serve the court to which the judge is appointed or elected, as determined by the Judicial Council and as provided for in the Budget Act.

SEC. 7.5. Section 68202.5 of the Government Code is amended to read:

68202.5. (a) The judge of a full-time justice court shall receive the same salary as a judge of the municipal court.

(b) Except as provided in subdivision (c) and Section 71702, a judge of a part-time justice court shall receive salary equal to percentage of that amount which equals the proportion of a full-time work week required to serve the court to which the judge is appointed or elected, as determined by the Judicial Council and as provided for in the Budget Act.

(c) Each judge of a part-time justice court shall receive the same annual salary as a judge of the municipal court if both of the following conditions are met:

(1) The judge has agreed to serve full time, and to make himself or herself available to take assignments from the Chief Justice whenever the workload determined pursuant to subdivision (d) does not require the judge's services in the court to which he or she is elected or appointed.

(2) The Chief Justice has certified that the judge is acceptable for regular judicial assignment to other courts. A certification under this subdivision may be revoked at any time for cause.

(d) A judge certified under subdivision (c) for full-time service shall be assigned to courts needing assistance when not required to serve the court to which he or she is elected or appointed, as determined by rules adopted by the Judicial Council, subject to the approval of the Chief Justice. The certification of a judge who does not serve in accordance with these rules shall be terminated. After a certification is terminated, the salary of such a judge shall be that prescribed by subdivision (b).

(e) Any justice court judge appointed or elected after January 1, 1990, shall be deemed to have agreed to make himself or herself available under paragraph (1) of subdivision (c).

(f) The salaries of justice court judges shall be paid by the counties. If the county is not a trial court funding option county, the excess of the salaries payable under subdivision (c) over the salaries payable under subdivision (b) shall be reimbursed to the county from funds made available to the Judicial Council for the assignment of judges.

SEC. 8. Section 71600 of the Government Code is amended to read:

71600. The board of supervisors shall regulate the compensation of the constables of justice courts, and prescribe the number, qualifications, and compensation of such clerks, deputies, and other attaches of justice courts as public convenience requires, notwithstanding the provisions of any charter. In any chartered county all such matters shall be regulated in the manner, if any, set forth in the charter with respect to township officers and employees, but the board of supervisors may increase the salary of any constable to compensate for increase of duties or living costs, notwithstanding the provisions of any charter.

SEC. 9 Section 71611 of the Government Code is repealed.

SEC. 10. Section 71612 of the Government Code is repealed.

SEC. 11. Section 71613 of the Government Code is repealed.

SEC. 12. Section 71660 of the Government Code is repealed.

SEC. 13. Section 71661 of the Government Code is amended to read:

71661. When any money is paid into a justice court, each clerk of a justice court shall issue forthwith a receipt for it in triplicate upon a form prescribed by the auditor of the county in which the court is situated. The receipts shall be numbered in numerical sequence and the original copy shall be delivered to the payor, the duplicate copy shall be filed with the county auditor at the time such money is deposited in the county treasury, and the triplicate copy shall be filed in the office of the clerk.

SEC. 14. Section 71661.1 of the Government Code is amended to read:

71661.1. Notwithstanding any other provision of law, where payment of any fee, fine, deposit in lieu of bail or other obligation which is owing to the justice court is remitted to the court by mail, the clerk may either mail to the remitter or hold for six months for the remitter an official receipt for such payment, except that such receipt shall be mailed to the remitter when a receipt is specifically requested by the remitter, his or her return address is given and the remittance consists of legal tender of the United States in the amount of five dollars ($5) or more. The clerk may destroy any official receipt held pursuant to this section for a period of six months.

SEC. 15. Section 71662 of the Government Code is amended to read:

71662. Each clerk of a justice court shall keep posted in a conspicuous place in his office, a plain and legible notice reading substantially as follows: "Notice to Public—Each clerk of a justice

court is required by law to forthwith give official receipts for any money paid into the court. Secure your receipt when payment is made."

SEC. 16. Section 71664 of the Government Code is repealed.

SEC. 17. Section 71664.5 of the Government Code is amended to read:

71664.5. Except as otherwise provided by law, the clerk of each justice court shall charge, in addition to the fees prescribed by this article, the fees prescribed by Sections 72054, 72055, 72056, 72059, 72060, and 72061 for all services to be performed.

SEC. 18. Section 71700 of the Government Code is repealed.

SEC. 18.5. Section 71702 of the Government Code, as amended by Section 1 of Chapter 1188 of the Statutes of 1983, is amended to read:

71702. (a) Each justice court judge shall receive the annual salary set forth in subdivision (b) of Section 68202 if each of the following conditions are met:

(1) The judge has been a member of the State Bar for the immediately preceding five years.

(2) The Chairman of the Judicial Council has certified that the judge is acceptable for judicial assignments to other courts after a determination of need and available funding.

(b) The salaries provided by this section shall be paid by the counties and shall be adjusted annually under the formula specified in Section 68203, but the counties shall be reimbursed therefor from appropriations made for that purpose by the state or from any funds made available to the Judicial Council for the assignment of judges.

SEC. 19. Section 71702 of the Government Code, as added by Section 2 of Chapter 1188 of the Statutes of 1983, is repealed.

SEC. 19.1. Section 72056.1 of the Government Code is amended to read·

72056.1. A fee of two dollars ($2) for the Judges' Retirement Fund shall be included within the total fees collected pursuant to Sections 72055 and 72056 in each action in a municipal or justice court.

The funds shall be transmitted at the end of each month to the Controller for payment into the Judges' Retirement Fund.

SEC. 19.2. Section 75002 of the Government Code is amended to read:

75002. "Judge" means a justice of the Supreme Court or of a court of appeal, or a judge of a superior court, municipal court, or justice court. A retired justice court judge does not acquire status as a judge for the purposes of this chapter by reason of designation as a judge pro tempore of, or assignment by the Chairperson of the Judicial Council to, any of these courts.

SEC. 19.4. Section 75003 of the Government Code is amended to read:

75003. "Salary" means the compensation received by a judge as the emolument of the office of judge, but, except as provided by Section 75076.2, does not include any additional compensation

received by reason of designation as a judge pro tempore or assignment by the Chairperson of the Judicial Council.

SEC. 19.6. Section 75004 of the Government Code is amended to read:

75004. "Service" means the period of time a person has made contributions by reason of holding office as a judge of any one or more of the courts of this state specified in Section 75002, computed in years and fractions of years.

SEC. 19.8. Section 75026 of the Government Code is amended to read:

75026. Except as provided in Section 75029, no judge shall be eligible to retire under Section 75025 if he or she has not received a salary from which contributions for the Judges' Retirement Fund have been deducted for a period or periods aggregating at least 10 years unless, prior to the effective date of his or her retirement, he or she has paid into the Judges' Retirement Fund a sum equal to the contributions which would have been deducted from his or her salary during the period of 10 years immediately preceding the effective date of his or her retirement if he or she had received a salary subject to deduction of contributions for the Judges' Retirement Fund during all of that period, excluding any time within the 10-year period during which contributions for the Judges' Retirement Fund were actually deducted from his or her salary, any time in that period in respect to which he or she has made payment under Section 75029, and any time in that period which is included in the computation of his or her service under Section 75031. The sum payable shall be computed by applying the rate or rates of deduction applicable to judges' salaries during that time to the salary which the judge last received as the incumbent of a judicial office to which he or she was elected by the people.

SEC. 20. Section 75029.1 is added to the Government Code, to read:

75029.1. On and after January 1, 1990, the right to elect to receive credit for prior service as a judge of an excluded court pursuant to Section 75029 shall apply only to a justice of the Supreme Court or a court of appeal or a judge of a superior or municipal court.

SEC. 20.1. Section 75029.2 is added to the Government Code, to read:

75029.2. The Judges' Retirement System, in cooperation with the Judicial Council of California, shall study the effects of providing justice court judges who have become members of the Judges' Retirement System the option of electing prior service credit for service as a judge of an excluded court prior to January 1, 1990. The results of the study shall be submitted to the Legislature on or before March 1, 1990.

SEC. 20.2. Section 75033.5 of the Government Code is amended to read.

75033.5. Notwithstanding any other provision of this chapter, any judge with at least five years of service, and prior to attaining age 70,

may retire, and upon his or her application therefor to the Judges' Retirement System after reaching the age which would have permitted him or her to retire for age and length of service under Section 75025 had he or she remained continuously in service as a judge up to such age, receive a retirement allowance based upon the judicial service as a judge of a court of record, with which he or she is credited, in the same manner as other judges, except as otherwise provided by this section the retirement allowance is an annual amount equal to 3.75 percent of the compensation payable, at the time payments of the allowance fall due, to the judge holding the office which the retired judge last held prior to his or her discontinuance of his or her service as judge, multiplied by the number of years and fractions of years of service with which the retired judge is entitled to be credited at the time of his or her retirement, not to exceed 20 years.

A judge who renders part-time service after January 1, 1990, shall receive a reduced retirement allowance based upon actual service rendered.

If a judge has served more than five years but less than 12 years, the above percentage of compensation payable shall be reduced 0.25 percent for each year that the service of the judge is less than 12 years. For the purposes of calculating the percentage of compensation payable, part-time service shall be the equivalent of full-time service.

No judge shall be eligible to receive an allowance pursuant to this section until the attainment of at least age 63 unless the judge is credited with 20 years of judicial service and has attained age 60.

The surviving spouse of any judge who has so elected to retire under this section shall receive for life an allowance equal to one-half of the retirement allowance that would be payable to the judge were he or she living and receiving the benefits accorded by this section, commencing with the day following the date of the death, if the judge dies after commencement of receipt of benefits, or the date the judge would have been able to commence receipt of benefits but for his or her death, if his or her death occurs prior to commencement of receipt of benefits.

An election to retire under this section shall be made in writing and filed with the Judges' Retirement System, and shall be without right of revocation, and upon such filing said judge shall be deemed retired with receipt of benefits deferred until herein provided, and the judicial office from which he or she has retired shall become vacant. Said notice and election of retirement shall be sufficient if it states in substance that said judge elects to retire under the benefits of this section.

A judge who leaves his or her office to accept any lucrative office under the United States within the purview of Section 7 of Article VII of the Constitution shall have any benefits receivable hereunder reduced by the amount of any salary or retirement benefits he or she receives by virtue of his or her service in such office.

SEC. 20.3. Section 75076.2 is added to the Government Code, to read:

75076.2. A judge who renders part-time service after January 1, 1990, shall receive a reduced retirement allowance. The reduction shall be based upon the relationship between the actual service rendered by the judge, including service rendered by reason of sitting on assignment, and a full-time judge's service during the period from January 1, 1990, until the date of retirement. Computations under this section and subdivision (a) of Section 75076 shall consider the salary payable to the judge of a justice court to be equal to that of a municipal court judge. For purposes of qualifying for retirement, part-time service shall be the equivalent of full-time service.

SEC. 20.4. Section 75101 of the Government Code is amended to read:

75101. The Controller shall at the end of each month ascertain the aggregate amount of the annual salaries of all positions established by law as justices of the Supreme Court and of the courts of appeal and judges of the superior courts, municipal courts, and justice courts, and out of the General Fund he or she shall transfer monthly into the Judges' Retirement Fund a sum equal to 8 percent of one-twelfth of the aggregate amount of those salaries.

SEC. 20.6. Section 75103 of the Government Code is amended to read:

75103. Except as provided in Section 75103.3, the auditor of each county shall deduct 8 percent from the portion paid by a county of the monthly salary of each judge of the superior court, municipal court, and justice court and cause this amount to be paid into the Judges' Retirement Fund.

SEC. 20.8. Section 980 of the Penal Code is amended to read:

980. At any time after the order for a bench warrant is made, whether the court is sitting or not, the clerk may, on application of the prosecuting attorney, issue a bench warrant to one or more counties.

SEC. 21. Section 1164 of the Penal Code is amended to read:

1164. (a) When the verdict given is receivable by the court, the clerk shall record it in full upon the minutes, and if requested by any party shall read it to the jury, and inquire of them whether it is their verdict. If any juror disagrees, the fact shall be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury shall, subject to subdivision (b), be discharged from the case.

(b) No jury shall be discharged until the court has verified on the record that the jury has either reached a verdict or has formally declared its inability to reach a verdict on all issues before it, including, but not limited to, the truth of any alleged prior conviction whether in the same proceeding or in a bifurcated proceeding.

SEC. 22. Section 1803 of the Vehicle Code is amended to read:

1803. (a) Every clerk of a court in which a person was convicted

of any violation of this code, of any offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, and of any felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, and of any violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a) of this section:

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle.

(7) Division 16.5 (commencing with Section 38000).

(8) Sections 23221, 23223, 23225, and 23226.

(c) If the court impounds a license or orders a person to limit his or her driving pursuant to paragraph (2) of subdivision (a) of Section 23161, subdivision (b) of Section 23166, subdivision (b) of Section 23186, or subdivision (c) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, which shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23167, 23187, or 23207, the clerk of the court in which the order terminating or revoking probation was entered, shall

prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

SEC. 22.5. Section 1803 of the Vehicle Code is amended to read:

1803. (a) Every clerk of a court in which a person was convicted of any violation of this code, of any violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, of any offense involving use or possession of controlled substances under Division 10 (commencing with Section 11000) of the Health and Safety Code, and of any felony offense when a commercial motor vehicle, as defined in subdivision (b) of Section 15210, was involved in or incidental to the commission of the offense, and of any violation of any other statute relating to the safe operation of vehicles, shall prepare within 10 days after conviction and immediately forward to the department at its office at Sacramento an abstract of the record of the court covering the case in which the person was so convicted. If sentencing is not pronounced in conjunction with the conviction, the abstract shall be forwarded to the department within 10 days after sentencing and the abstract shall be certified by the person so required to prepare it to be true and correct.

For the purposes of this section, a forfeiture of bail shall be equivalent to a conviction.

(b) The following violations are not required to be reported under subdivision (a) of this section:

(1) Division 3.5 (commencing with Section 9840).

(2) Section 21113, with respect to parking violations.

(3) Chapter 9 (commencing with Section 22500) of Division 11.

(4) Division 12 (commencing with Section 24000), except Sections 24002, 24004, 24250, 24409, 24604, 24800, 25103, 26707, 27151, 27315, 27360, 27800, and 27801 and Chapter 3 (commencing with Section 26301).

(5) Division 15 (commencing with Section 35000), except Chapter 5 (commencing with Section 35550).

(6) Violations for which a person was cited as a pedestrian or while operating a bicycle.

(7) Division 16.5 (commencing with Section 38000).

(8) Sections 23221, 23223, 23225, and 23226.

(c) If the court impounds a license or orders a person to limit his or her driving pursuant to paragraph (2) of subdivision (a) of Section 23161, subdivision (b) of Section 23166, subdivision (b) of Section 23186, or subdivision (c) of Section 40508, the court shall notify the department concerning the impoundment or limitation on an abstract prepared pursuant to subdivision (a) of this section or on a separate abstract, which shall be prepared within 10 days after the impoundment or limitation was ordered and immediately forwarded to the department at its office in Sacramento.

(d) If the court determines that a prior judgment of conviction of a violation of Section 23152 or 23153 is valid or is invalid on

constitutional grounds pursuant to Section 41403, the clerk of the court in which the determination is made shall prepare an abstract of that determination and forward it to the department in the same manner as an abstract of record pursuant to subdivision (a).

(e) Within 10 days of an order terminating or revoking probation under Section 23167, 23187, or 23207, the clerk of the court in which the order terminating or revoking probation was entered, shall prepare and immediately forward to the department at its office in Sacramento an abstract of the record of the court order terminating or revoking probation and any other order of the court to the department required by law.

SEC. 23. Section 1803.5 of the Vehicle Code is amended to read:

1803.5. Every clerk of a court or hearing officer, when a person who receives a notice to appear at a court or board proceeding for a violation of any statute relating to the safe operation of vehicles is granted a continuance of the proceeding in consideration for attendance at a school for traffic violators, a licensed driving school, or any other court-approved program of driving instruction, and which results in a dismissal of the complaint in consideration for that attendance, shall prepare an abstract of the record of the court or board proceeding, certify the abstract to be true and correct, and cause the abstract to be forwarded to the department at its office at Sacramento within 10 days after the complaint is dismissed.

SEC. 24. (a) Section 3 5 of this bill incorporates amendments to Section 396b of the Code of Civil Procedure proposed by both this bill and AB 157. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 396b of the Code of Civil Procedure, and (3) this bill is enacted after AB 157, in which case Section 3 of this bill shall not become operative

(b) Section 7.5 of this bill incorporates substantially all of the amendments to Section 68202.5 of the Government Code proposed by both this bill and SB 1350. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 68202.5 of the Government Code, and (3) this bill is enacted after SB 1350, in which case Section 68202.5 of the Government Code, as amended by Section 7 of this bill, shall remain operative only until July 1, 1990, as specified in SB 1350, at which time Section 7.5 of this bill shall become operative.

(c) Section 22.5 of this bill incorporates substantially all of the amendments to Section 1803 of the Vehicle Code proposed by both this bill and SB 1119. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 1803 of the Vehicle Code, and (3) this bill is enacted after SB 1119, in which case Section 1803 of the Vehicle Code, as amended by Section 22 of this bill, shall remain operative only until January 1, 1992, as specified in SB 1119, at which time Section 22.5 of this bill shall become

operative.

SEC. 25. Section 18.5 of this bill shall become inoperative on July 1, 1990, if Senate Bill 1350 of the 1989–90 Regular Session is chaptered and takes effect on or before January 1, 1990, and amends Section 68202.5 of the Government Code to provide for the salary of part-time justice court judges.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the duties, obligations, or responsibilities imposed on local government by this act were expressly included in a ballot measure approved by the voters in a statewide election.

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

CHAPTER 1418

An act to amend Sections 21628 and 21642 of, and to add Section 21643 to, the Business and Professions Code, and to amend Section 21207 of, the Financial Code relating to secondhand dealers.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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 be 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.

(h) When a secondhand dealer complies with all of the provisions of this section, he or she shall be deemed to have received from the seller or pledgor adequate evidence of authority to sell or pledge the property for all purposes included in this article, and Division 8 (commencing with Section 21000) of the Financial Code.

In enacting this subdivision, it is the intent of the Legislature that its provisions shall not adversely affect the implementation of, or prosecution under, any provision of the Penal Code.

SEC. 1.5. 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 be 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. This requirement does not apply to a coin dealer, unless required pursuant to local regulation.

(h) When a secondhand dealer complies with all of the provisions of this section, he or she shall be deemed to have received from the seller or pledgor adequate evidence of authority to sell or pledge the property for all purposes included in this article, and Division 8 (commencing with Section 21000) of the Financial Code.

In enacting this subdivision, it is the intent of the Legislature that its provisions shall not adversely affect the implementation of, or prosecution under, any provision of the Penal Code.

SEC 2. Section 21642 of the Business and Professions Code is amended to read:

21642. (a) A license granted pursuant to Section 21641 shall be renewable one year from the date of issue, and annually thereafter, upon the filing of a renewal application and the payment of a license renewal fee specified by the licensing authority.

(b) The license shall be subject to forfeiture by the licensing authority and the licensee's activities as a secondhand dealer shall be subject to being enjoined pursuant to Section 21646 for breach, and the authority may impose any of the following conditions:

(1) The business shall be carried on only in the building or buildings designated on the license.

(2) The license or a copy thereof, certified by the licensing authority, shall be displayed on the premises where it easily can be seen.

(3) The licensee shall not engage in any act which the licensee knows to be in violation of this article.

(4) The licensee shall not be convicted of an attempt to receive stolen property or any other offense involving stolen property. For the purposes of this paragraph, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the chief of police, the sheriff or, where appropriate, the police commission, is permitted to take following the establishment of a conviction may be taken 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.

(c) Notwithstanding subdivisions (a) and (b), no person shall have his or her renewal application for a secondhand dealer's license denied, nor shall his or her secondhand dealer's license be forfeited solely on the grounds that he or she violated any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of this chapter, or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

SEC. 3. Section 21643 is added to the Business and Professions Code, to read:

21643. No transactions that require reporting under Section 21628 shall be engaged in with a minor.

SEC. 4. Section 21207 of the Financial Code is amended to read:

21207. No pawnbroker shall receive anything in pledge from any person who is a minor.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 21628 of the Business and Professions Code proposed by both this bill and SB 1519. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1990, (2) each bill amends Section 21628 of the Business and Professions Code, and (3) this bill is enacted after SB 1519, in which case Section 1 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1419

An act to add Section 1569.314 to the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1569.314 is added to the Health and Safety Code, to read:

1569.314. A residential care facility for the elderly shall not require patients to purchase drugs, or rent or purchase medical equipment, from any particular pharmacy or other source.

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

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CHAPTER 1420

An act to add Section 19057.3 to the Government Code, to amend Sections 1203.2a, 2039, 2043.4, 2045 4, 2048.4, 2670.5, 2675, 2676, 2677, 2678, 2932, 3320, 3325, 3404, 3406, 3601, 3700.5, 5002, 5056, 6050, 6105, and 6205 of, and to repeal Section 2091 of, the Penal Code, and to amend Section 3304 of the Welfare and Institutions Code, relating to state government.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 19057.3 is added to the Government Code, to read:

19057.3. (a) Notwithstanding Section 19057, for a position in the Department of Corrections, there shall be certified to the appointing power the names and addresses of all those eligibles for peace officer and closely allied classes whose scores, at the time of certification, represent the three highest ranks on the employment list for the class in which the position belongs and who have indicated their

willingness to accept appointment under the conditions of employment specified.

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

(c) If fewer than three ranks of persons willing to accept appointment are on the list from which certification is to be made, then additional eligibles shall be certified from the various lists next lower in order of preference until names from three ranks are certified. If there are fewer than three names on those lists, and the appointing power does not choose to appoint from among these, the appointing power may demand certification of three names and examinations shall be conducted until at least three names may be certified. The appointing power shall fill the position by the appointment of one of the persons certified.

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

(e) The board shall adopt rules to allow for the names of eligibles to be transferred from lists for the same class or comparable classes where names from one list were certified under the rule of three ranks, and names from the other list were certified under the rule of three names.

SEC 2. 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 of the prison in which he or she is confined or the duly authorized representative of the warden, and the warden 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 the 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 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 or duly authorized representative of any prison in this state or another 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. 3. Section 2039 of the Penal Code is amended to read:

2039. The Governor, upon recommendation of the Director of Corrections and in accordance with Section 6050, shall appoint a warden for the Deuel Vocational Institution. The director shall appoint, subject to civil service, those officers and employees as may be necessary.

SEC. 4. Section 2043.4 of the Penal Code is amended to read:

2043.4. The warden of the California Correctional Center at Susanville shall be appointed pursuant to Section 6050 and the Director of Corrections shall appoint, subject to civil service, those other officials and employees as may be necessary.

SEC. 5. Section 2045.4 of the Penal Code is amended to read:

2045.4. The Governor, upon recommendation of the Director of Corrections and in accordance with Section 6050, shall appoint a warden for the California Training Facility. The director shall appoint, subject to civil service, those officers and employees as may be necessary.

SEC. 6. Section 2048.4 of the Penal Code is amended to read:

2048.4. The warden of the California Correctional Institution at Tehachapi shall be appointed pursuant to Section 6050, and the Director of Corrections shall appoint, subject to civil service, those other officials and employees as may be necessary.

SEC 7. Section 2091 of the Penal Code is repealed.

SEC. 8. Section 2670.5 of the Penal Code is amended to read:

2670.5. (a) No person confined or detained under Title 1 (commencing with Section 2000) and Title 2 (commencing with Section 3200) shall be administered or subjected to any organic therapy as defined in subdivision (c) without his or her informed consent, provided that:

(1) If the person gives his or her informed consent to organic therapy, it shall be administered only if there has been compliance with Sections 2675 to 2680, inclusive.

(2) If the person lacks the capacity for informed consent to organic therapy other than psychosurgery as referred to in subdivision (c), in order to proceed with the therapy, the warden shall secure an order from the superior court to authorize the administration of the therapy in accordance with Sections 2675 to 2680, inclusive.

(b) No person confined or detained under Title 1 (commencing with Section 2000) or Title 2 (commencing with Section 3200) who lacks the capacity for informed consent shall be administered or subjected to psychosurgery as referred to in subdivision (c).

(c) The term organic therapy refers to:

(1) Psychosurgery, including lobotomy, stereotactic surgery, electronic, chemical or other destruction of brain tissues, or implantation of electrodes into brain tissue.

(2) Shock therapy, including, but not limited to, any convulsive therapy and insulin shock treatments.

(3) The use of any drugs, electric shocks, electronic stimulation of the brain, or infliction of physical pain when used as an aversive or reinforcing stimulus in a program of aversive, classical, or operant conditioning.

(d) A person does not waive his or her right to refuse any organic therapy by having previously given his or her informed consent to the therapy, and the person may withdraw his or her consent at any time.

If required by sound medical-psychiatric practice, the attending physician shall, after the person withdraws his or her previously given informed consent, gradually phase the person out of the therapy if sudden cessation would create a serious risk of mental or physical harm to the person.

(e) Nothing in this article shall be construed to prevent the attending physician from administering nonorganic therapies such as psychotherapy, psychoanalysis, group therapy, milieu therapy, or other therapies or programs involving communication or interaction among physicians, patients, and others, with or without the use of

drugs when used for purposes other than described in paragraph (3) of subdivision (c).

(f) Nothing in this article shall be construed to prevent the administration of drugs not connected with a program of conditioning and intended to cause negative physical reactions to ingestion of alcohol or drugs.

SEC. 9. Section 2675 of the Penal Code is amended to read:

2675. (a) If the proposed organic therapy is not prohibited by subdivision (a) or (b) of Section 2670.5, then in order to administer the therapy the warden of the institution in which the person is confined shall petition the superior court of the county in which the person is confined for an order authorizing such organic therapy.

(b) The petition shall summarize the facts which the attending physician is required to communicate to the person pursuant to Section 2673, and shall state whether the person has the capacity for informed consent, and, if so, whether the person has given his or her informed consent to the proposed therapy. The petition shall clearly specify what organic therapy the institution proposes to administer to the person. The petition shall specify what mental illness, disorder, abnormality, or defect justifies the administration of such therapy. Copies of the petition shall be personally served upon the person and served upon his or her attorney, guardian or conservator on the same day as it is filed with the clerk of the superior court.

(c) The person confined, or his or her attorney, guardian, or conservator may file a response to the petition for organic therapy. The response shall be filed no later than 10 days after service of the petition unless the court grants a continuance not to exceed 10 additional days, and shall be served on the warden on the same day it is filed.

SEC. 10. Section 2676 of the Penal Code is amended to read:

2676. (a) Any person, or his or her attorney, guardian, or conservator may file a petition with the superior court of the county in which he or she is confined for an order to prohibit the administration upon him or her of an organic therapy. The filing of such a petition shall constitute a refusal of consent or withdrawal of any prior consent to an organic therapy. The clerk of the court shall serve a copy of the petition, on the same day it is filed, upon the warden.

(b) The warden shall file a response to the petition to prohibit the enforced administration of any organic therapy. The response shall be filed no later than 10 days after the filing of the petition, unless the court grants a continuance not to exceed 10 additional days, and shall be personally served upon the person and served upon his or her attorney, guardian, or conservator on the same day as it is filed with the clerk of the superior court. The response shall not constitute a petition for an order to proceed with any organic therapy pursuant to Section 2675, which shall be the exclusive procedure for authorization to administer any organic therapy.

SEC. 11. Section 2677 of the Penal Code is amended to read:

2677. At the time of filing of a petition pursuant to Section 2676 by the person, or pursuant to Section 2675 by the warden, the court shall appoint the public defender or other attorney to represent the person unless the person is financially able to provide his or her own attorney. The attorney shall advise the person of his or her rights in relation to the proceeding in question and shall represent him or her before the court.

The court shall also appoint an independent medical expert on the person's behalf to examine the person's medical, mental, or emotional condition and to testify thereon, unless the person is financially able to obtain the expert testimony. However, if the person has given his or her informed consent to the proposed organic therapy, other than psychosurgery as referred to in subdivision (c) of Section 2670.5, and his or her attorney concurs in the proposed administration of the organic therapy, the court may waive the requirement that the an independent medical expert be appointed.

SEC. 12. Section 2678 of the Penal Code is amended to read:

2678. The court shall conduct the proceedings within 10 judicial days from the filing of the petition described in Section 2675 or 2676, whichever is filed earlier, unless the warden's attorney or the person's attorney requests a continuance, which may be for a maximum of 10 additional judicial days. The court shall conduct the proceedings in accordance with constitutional guarantees of due process of law and the procedures under Section 13 of Article I of the California Constitution.

SEC. 13. Section 2932 of the Penal Code is amended to read:

2932 (a) (1) For any time credit accumulated pursuant to Section 2931 or to Section 2933, not more than 360 days of credit may be denied or lost for a single act of murder, attempted murder, solicitation of murder, manslaughter, rape, sodomy, or oral copulation accomplished against the victim's will, attempted rape, attempted sodomy, or attempted oral copulation accomplished against the victim's will, assault or battery causing serious bodily injury, assault with a deadly weapon or caustic substance, taking of a hostage, escape with force or violence, or possession or manufacture of a deadly weapon or explosive device, whether or not prosecution is undertaken for purposes of this paragraph. Solicitation of murder shall be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Not more than 180 days of credit may be denied or lost for a single act of misconduct, except as specified in paragraph (1), which could be prosecuted as a felony whether or not prosecution is undertaken.

(3) Not more than 90 days of credit may be denied or lost for a single act of misconduct which could be prosecuted as a misdemeanor, whether or not prosecution is undertaken.

(4) Not more than 30 days of credit may be denied or lost for a single act of misconduct defined by regulation as a serious disciplinary offense by the Department of Corrections. Any person

confined due to a change in custodial classification following the commission of any serious disciplinary infraction shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for the act of misconduct or 180 days, whichever is less. Any person confined in a secure housing unit for having committed any misconduct specified in paragraph (1) in which great bodily injury is inflicted upon a nonprisoner shall, in addition to any loss of time credits, be ineligible to receive participation or worktime credit for a period not to exceed the number of days of credit which have been lost for that act of misconduct, or for the period that the prisoner is confined in a secure housing unit, whichever is less. In unusual cases, an inmate may be denied the opportunity to participate in a credit qualifying assignment for up to six months beyond the period specified in this subdivision if the Director of Corrections finds, after a hearing, that no credit qualifying program may be assigned to the inmate without creating a substantial risk of physical harm to staff or other inmates. At the end of the six-month period and of successive six-month periods, the denial of the opportunity to participate in a credit qualifying assignment may be renewed upon a hearing and finding by the director.

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

(b) For any credit accumulated pursuant to Section 2931, not more than 30 days of participation credit may be denied or lost for a single failure or refusal to participate. Any act of misconduct described by the Department of Corrections as a serious disciplinary infraction if committed while participating in work, educational, vocational, therapeutic, or other prison activity shall be deemed a failure to participate

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

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

an individual who shall be independent of the case and shall take place within 30 days of the written notice.

(B) The Department of Corrections may delay written notice beyond 15 days when all of the following factors are true:

(i) An act of misconduct is involved which could be prosecuted as murder, attempted murder, or assault on a prison employee, whether or not prosecution is undertaken.

(ii) Further investigation is being undertaken for the purpose of identifying other prisoners involved in the misconduct.

(iii) Within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, the investigating officer makes a written request to delay notifying that prisoner and states the reasons for the delay.

(iv) The warden of the institution approves of the delay in writing.

The period of delay under this paragraph shall not exceed 30 days. The prisoner's hearing shall take place within 30 days of the written notice.

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

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

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

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

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

(e) Each prisoner subject to Section 2931 shall be notified of the total amount of good behavior and participation credit which may be credited pursuant to Section 2931, and his or her anticipated time-credit release date. The prisoner shall be notified of any change

in the anticipated release date due to denial or loss of credits, award of worktime credit, under Section 2933, or the restoration of any credits previously forfeited.

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

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

Notwithstanding the notification requirements in this paragraph and subparagraphs (A) and (B) of paragraph (1) of subdivision (c), in the event the case is referred to criminal authorities for prosecution and the authority requests that the prisoner not be notified so as to protect the confidentiality of its investigation, no notice to the prisoner shall be required until an accusatory pleading is filed with the court, or the authority notifies the warden, in writing, that it will not prosecute or it authorizes the notification of the prisoner The notice exceptions provided for in this paragraph shall only apply if the criminal authority requests of the warden, in writing, and within the 15 days provided in subparagraph (A) of paragraph (1) of subdivision (c), that the prisoner not be notified. Any period of delay of notice to the prisoner shall not exceed 30 days beyond the 15 days referred to in subdivision (c). In the event that no prosecution is undertaken, the procedures in subdivision (c) shall apply, and the time periods set forth in that subdivision shall commence to run from the date the warden is notified in writing of the decision not to prosecute. In the event the authority either cancels its requests that the prisoner not be notified before it makes a decision on prosecution or files an accusatory pleading, the provisions of this paragraph shall apply as if no request had been received, beginning from the date of the cancellation or filing.

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

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

(h) Nothing in the amendments to this section made at the 1981–82 Regular Session of the Legislature shall affect the granting or revocation of credits attributable to that portion of the prisoner's

sentence served prior to January 1, 1983.

SEC. 14. Section 3320 of the Penal Code is amended to read:

3320. The warden of the California Institution for Women shall be a woman, who shall have immediate charge and management of the institution, subject to the control of the department. The department may employ other assistants, officers, and employees for the institution.

SEC. 15. Section 3325 of the Penal Code is amended to read:

3325. The warden described in this chapter shall, subject to the control of the director, have those powers, perform those duties and exercise those functions, respecting females convicted of felonies, as the wardens now exercise over male prisoners.

SEC. 16. Section 3404 of the Penal Code is amended to read:

3404. When there is any reasonable grounds to believe that a prisoner may be forcibly removed from the California Institution for Women, the warden shall report the fact to the Governor, who may order the removal of the prisoner to any California State prison for safekeeping, and it is hereby made the duty of the warden of the prison to accept and detain the prisoner for the further execution of her sentence. The Governor may thereafter order the prisoner returned to the California Institution for Women for the further execution of her sentence according to law.

The necessary costs and expenses incurred in carrying out the provisions of this section shall be a proper charge against any fund hereafter appropriated as an emergency fund, or similar appropriation for contingencies, notwithstanding any limitations or restrictions that may be imposed upon the expenditure of any appropriation.

SEC. 17. Section 3406 of the Penal Code is amended to read:

3406. Any female prisoner shall have the right to summon and receive the services of any physician and surgeon of her choice in order to determine whether she is pregnant. The warden may adopt reasonable rules and regulations with regard to the conduct of examinations to effectuate this determination.

If the prisoner is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of these services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the institution shall be borne by the prisoner.

Any physician providing services pursuant to this section shall possess a current, valid, and unrevoked certificate to engage in the practice of medicine issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The rights provided for prisoners by this section shall be posted in at least one conspicuous place to which all female prisoners have access.

SEC. 18. Section 3601 of the Penal Code is amended to read:

3601. Every female person, upon whom has been imposed the

judgment of death, shall be delivered to the warden of the California Institution for Women, there to be held pending decision upon appeal.

SEC. 19. Section 3700.5 of the Penal Code is amended to read:

3700.5. Whenever a court makes and causes to be entered an order appointing a day upon which a judgment of death shall be executed upon a defendant, the warden of the state prison to whom such defendant has been delivered for execution or, if the defendant is a female, the warden of the California Institution for Women, shall notify the Director of Corrections who shall thereupon select and appoint three alienists, all of whom must be from the medical staffs of the Department of Corrections, to examine the defendant, under the judgment of death, and investigate his or her sanity. It is the duty of the alienists so selected and appointed to examine such defendant and investigate his or her sanity, and to report their opinions and conclusions thereon, in writing, to the Governor, to the warden of the prison at which the execution is to take place at least 20 days prior to the day appointed for the execution of the judgment of death upon the defendant The warden shall furnish a copy of the report to counsel for the defendant upon his or her request.

SEC 20. Section 5002 of the Penal Code is amended to read:

5002. (a) The department shall succeed to and is hereby vested with all of the powers and duties exercised and performed by the following departments, boards, bureaus, commissions, and officers when such powers and duties are not otherwise vested by law:

(1) The Department of Penology.

(2) The State Board of Prison Directors.

(3) The Bureau of Paroles.

(4) The warden and the clerk of the California State Prison at San Quentin.

(5) The warden and the clerk of the California State Prison at Folsom.

(6) The warden of and the clerk of the California Institution for Men.

(7) The California Crime Commission.

(b) Whenever any designation of any of the departments, boards, bureaus, commissions, or officers mentioned in subdivision (a) is contained in any provision of law and this designation is expressly made to refer to the Department of Corrections, the Board of Corrections or the Board of Prison Terms, then the Department of Corrections, the Board of Corrections or the Board of Prison Terms, to whichever one the designation is made to refer, shall exercise the power or perform the duty heretofore exercised or performed by the particular departments, boards, bureaus, or officers mentioned in subdivision (a).

(c) The powers and duties of the State Board of Prison Directors and of the clerks of the state prisons and the California Institution for Men are transferred to and shall be exercised and performed by the Department of Corrections, except as may be otherwise expressly

provided by law.

(d) The powers and duties of wardens of the state prisons and the California Institution for Men, presently or hereafter, expressly vested by law in them shall be exercised by them but such exercise shall be subject to the supervision and control of the Director of Corrections. All powers and duties not expressly vested in the wardens are transferred to and shall be exercised and performed by the Department of Corrections. When the designation of warden is expressly made to refer to the Department of Corrections, the department shall exercise the power and perform the duty heretofore exercised or performed by the warden.

(e) The Board of Prison Terms shall succeed to and is hereby vested with all of the powers and duties exercised and performed by the following boards when such powers and duties are not otherwise vested by law:

(1) The Board of Prison Terms and Paroles.

(2) The Advisory Pardon Board.

(3) The Adult Authority.

(4) The Women's Board of Terms and Paroles.

(5) The Community Release Board.

SEC. 21. Section 5056 of the Penal Code is amended to read:

5056. (a) Each state prison under the jurisdiction of the department shall have a citizens' advisory committee. Each committee shall consist of nine members appointed by the institution's warden from a list of nominations submitted to him or her as follows:

(1) Two persons from nominations submitted by the Assembly member in whose district the prison is located.

(2) Two persons from nominations submitted by the Senator in whose district the prison is located.

(3) Two persons from nominations submitted by the city council of the city containing or nearest to the institution.

(4) Two persons from nominations submitted by the county board of supervisors of the county containing the institution.

(5) One person from nominations submitted by the chief of police of the city containing or nearest to the institution and the county sheriff of the county containing the institution

(b) Each committee shall select its own chairperson by a majority vote of its members. The term of office of all members shall be two years. In the event of a vacancy due to resignation, death, or absence from three consecutive meetings, the appointing power shall fill the vacancy following receipt of written notification that a vacancy has occurred.

(c) Each committee shall meet at least once every two months or as often, on the call of the chairperson, as necessary to carry out the purposes and duties of the committee. Meetings of the committee shall be open to the public. The warden of the institution shall meet with the committee at least four times a year.

The advisory committees of the several institutions shall have the

power of visitation of prison facilities and personnel in furtherance of the goals of this section.

(d) Nothing in this section shall be construed to require the disclosure by the department of information which may threaten the security of an institution or the safety of the surrounding community. Nor shall the power of visitation specified in subdivision (c) extend to situations where institutional security would be jeopardized.

SEC. 22. Section 6050 of the Penal Code is amended to read:

6050. The Governor, upon recommendation of the director, and with the advice and consent of the Senate, shall appoint the wardens of the various state prisons. Each warden shall be subject to removal by the director. If the director removes the warden, his or her action shall be final. The wardens shall be exempt from civil service.

The Department of Personnel Administration shall fix the compensation of the wardens and superintendents of the state prisons.

SEC. 23. Section 6105 of the Penal Code is amended to read:

6105. The Governor, upon recommendation of the Director of Corrections and in accordance with Section 6050, shall appoint a warden for the medical facility. The director shall appoint, subject to civil service, other officers and employees as may be necessary.

SEC. 24. Section 6205 of the Penal Code is amended to read:

6205. Each conservation center shall be headed by a warden, appointed pursuant to Section 6050, and the Director of Corrections shall appoint, subject to civil service, other officers and employees as may be necessary.

SEC. 25. Section 3304 of the Welfare and Institutions Code is amended to read:

3304. A warden shall be appointed for the California Rehabilitation Center pursuant to Section 6050 of the Penal Code, and the Director of Corrections shall appoint, subject to civil service, such other officers and employees as may be necessary.

SEC. 26. Section 1 of this act shall be applicable to names certified from employment lists from examinations administered after January 1, 1989.

SEC. 27. Notwithstanding any other provision of law, the Director of General Services, on behalf of the Department of Corrections, may enter into a lease-purchase agreement with an option to purchase or a lease with an option to purchase with an initial option purchase price over two million dollars ($2,000,000) for approximately 40 acres of land, including the Richard A. McGee Correctional Training Academy and structures thereon, together with improvements, located in or near the City of Galt, County of Sacramento. The director shall notify the Chairperson of the Joint Legislative Budget Committee of the intention to enter into the proposed lease at least 30 days prior to entering into the lease.

At any time before or after the lease has been entered into, the land and facility may be purchased for use by the Department of Corrections by the issuance of bonds, negotiable notes, or negotiable

bond anticipation notes by the State Public Works Board acting pursuant to the State Building Construction Act of 1955 (commencing with Section 15800) of Division 3 of Title 2 of the Government Code. The amount of bonds or notes to be sold shall not exceed eleven million dollars ($11,000,000) and shall be sufficient to pay the purchase price and any obligations assumed in connection with the purchase, plus any additional amounts necessary to pay the costs of financing, including, but not limited to, interest payable on any interim loan, a reasonably required reserve fund, and the cost of issuance of permanent financing. The State Public Works Board may augment this amount if necessary.

This purchase authorization for the Richard A. McGee Correctional Training Academy at Galt includes authorization for improvements consisting of new buildings for five housing units, three classrooms, one administration building, one exercise building, and one maintenance shop.

In addition to the new buildings, authorization is hereby given to expand the existing cafeteria, add a new water well, add additional parking, make repairs to all existing roadways and repairs to correct facility deficiencies as recommended by the State Fire Marshal and the Environmental Health Division of the Department of General Services.

The Department of General Services shall pursue and utilize the most economical form of financing available.

CHAPTER 1421

An act to amend Sections 2804, 4090, and 5024 of, and to add Sections 2804.3 and 2804.5 to, the Streets and Highways Code, relating to public works.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 2804 of the Streets and Highways Code is amended to read:

2804. (a) This division does not apply to irrigation districts, irrigation district improvement districts, fire districts, fire protection districts, or public cemetery districts, or to any proceeding otherwise subject to this division when one or more of the following situations exist:

(1) The proceedings are undertaken by a district or public corporation within one year of its incorporation.

(2) The improvement proceedings are by a chartered city, chartered county, or a county sanitation district which is governed ex officio by the board of supervisors of a chartered county, and the

city, county, or district has complied with Section 19 of Article XVI of the California Constitution.

(3) All of the owners of more than 60 percent in area of the property subject to assessment for the proposed improvements have signed and filed with the clerk or secretary of the legislative body undertaking the proceedings a written petition for the improvements meeting the requirements of Section 2804.5.

(b) As used in this section, "substantially described" means that additional improvements of the same or similar nature may not be provided unless the estimated cost of the improvements does not exceed 10 percent of the estimated cost of the improvements provided in the former report.

(c) As used in this section, "owner of land" means only a person who, at the time the petition is filed with the clerk or secretary of the legislative body, appears to be the owner upon the assessor's roll or, in the case of transfers of land, or parts thereof, subsequent to the date upon which the last assessor's roll was prepared, appear to be the owner on the records in the county assessor's office which the county assessor will use to prepare the next assessor's roll. If any person signing the petition appears on the assessor's roll or the records in the county assessor's office as an owner of property as a joint tenant or tenant in common, or as a husband or wife, that property shall be counted as if all those persons had signed the petition.

SEC. 2. Section 2804.3 is added to the Streets and Highways Code, to read:

2804.3. Notwithstanding paragraph (3) of subdivision (a) of Section 2804, this division applies to proceedings where a petition is signed by an owner of 40 percent or more in area of the property proposed to be subject to assessment, and where some or all of the other lots or parcels proposed to be subject to assessment are used primarily for residential purposes, unless the petition and waiver is also signed by owners of 50 percent in area of the property proposed to be subject to assessment which is not owned by the owner of 40 percent or more in area of the property proposed to be subject to assessment.

SEC. 3. Section 2804.5 is added to the Streets and Highways Code, to read:

2804.5 A petition for improvements for purposes of paragraph (3) of subdivision (a) of Section 2804 shall include, but not be limited to, all of the following:

(a) A statement, in clear and simple English, that the landowner is waiving certain rights to protest against and stop the formation of the proposed assessment district.

(b) A brief description of the proposed project.

(c) An estimate of the total cost of the proposed project to be financed by the proposed assessment district.

SEC. 4. Section 4090 of the Streets and Highways Code is amended to read:

4090. Whenever the public interest or convenience requires, the legislative body of any city may do all of the following:

(a) Order the laying out, opening, extending, widening, straightening, establishment or change of grade, in whole or in part, of any public street or parking place within the city, if that change does not result in noncompliance with any applicable zoning ordinance.

(b) Acquire by eminent domain, any property necessary or convenient for any purpose specified in subdivision (a) or any interest therein, including, but not limited to, an easement for the construction and maintenance of any public street or walk, parking place, passage, or way upon the surface of the ground or in any designated level or slope, above or below the surface together with a sufficient overhead clearance. The legislative body shall conclusively determine and designate that overhead clearance and shall leave to the owner the right to construct or maintain any building or other structure above or below the street, walk, parking place, passage, or way and the overhead clearance acquired by the city.

(c) Acquire, by eminent domain, any property, right-of-way, or easement, or interest therein, necessary or convenient for constructing any work or improvement included within the Improvement Act of 1911 (Division 7 (commencing with Section 5000)).

SEC. 5. Section 5024 of the Streets and Highways Code, as amended by Chapter 104 of the Statutes of 1989, is amended to read:

5024. "Incidental expense" includes all of the following:

(a) Compensation for work done by the engineer, and attorney's fees or services in proceedings pursuant to this division. Notwithstanding the foregoing, if a court of competent jurisdiction renders a final judgement that invalidates in whole or part the formation of the assessment district or the levy of assessments, any attorney's fees and engineering charges incurred by the city in defending such litigation are not incidental expenses and shall not be charged against the assessment district in any manner except as to those claims upon which the city prevails and as allowed by a court of competent jurisdiction.

(b) The cost of printing and advertising provided for in this division, including the treasurer's estimated cost of printing, servicing, and collecting any bonds to be issued to represent or be secured by unpaid assessments.

(c) The compensation of the person appointed by the superintendent of streets to take charge of, and superintend any of, the work.

(d) The expenses of making the assessment, and of the collection of assessments by the superintendent of streets when directed by ordinance to receive payments pursuant to Section 5396, and of preparing and typing the resolutions, notices, and other papers and proceedings for any work authorized by this division.

(e) The expenses of making any analyses and tests to determine that the work, and any materials or appliances incorporated therein, comply with the specifications.

(f) All costs and expenses incurred in carrying out the investigations and making the reports required by the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

(g) The cost of title searching, description writing, salaries of right-of-way agent, appraisal fees, partial reconveyance fees, surveys, and sketches incident to securing rights-of-way for any work authorized by this division.

(h) Any other expenses incidental to the construction, completion, and inspection of the work in the manner provided for in this division.

(i) The cost of relocating or altering any public utility facilities as required by the improvement in those cases where that cost is the legal obligation of the city.

(j) The cost of planning and designing public facilities to be financed pursuant to this division, including the cost of environmental evaluations of those facilities.

(k) The cost of filing and of recording documents where the cost is the legal obligation of the city.

(*l*) The cost of any acquisition, as defined in Section 5023.1, and expenses incidental in connection with the acquisition.

(m) If the construction of sewers or appurtenances incident thereto has been ordered, sewer service, connection, and capacity charges established by the city as a condition to the providing of sewer service for the benefit of properties within the assessment district and required for the completion and utilization of the improvement constructed.

(n) If the construction of water improvements or appurtenances incident thereto has been ordered, water service, connection, and capacity charges established by the city as a condition to the providing of water service for the benefit of properties within the assessment district and required for the completion and utilization of the improvement constructed.

(o) All costs not identified in subdivisions (a) to (n), inclusive, related to the issuance of bonds, including, but not limited to, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit and other credit enhancement costs, and initial fees for the registration of bonds.

All demands for incidental expenses shall be presented to the street superintendent, by an itemized bill, duly verified by the demandant.

CHAPTER 1422

An act to add and repeal Section 15464 of the Government Code, and to add and repeal Article 8 (commencing with Section 436.46) of Chapter 4 of Part 1 of Division 1 of the Health and Safety Code, relating to hospitals.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

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

(a) Rural hospitals are an integral link in the state's care system serving the needs of rural residents and tourists.

(b) Based on the current financial performance of rural hospitals throughout the state, due to changes in utilization patterns and third-party payment programs, many strategically located rural hospitals will close.

(c) Due to their financial state, small and rural hospitals do not have the resources to fund depreciation and are placed under additional financial constraints when they are required, on short notice, to meet a physical plant or equipment capital expenditure due to a regulatory requirement.

SEC. 2. Section 15464 is added to the Government Code, to read:

15464. (a) The authority shall establish on a pilot program basis a program of financing loans to small and rural hospitals, as defined in Section 1188.855 of the Health and Safety Code, to finance physical plant and equipment capital expenditures necessary to satisfy regulatory requirements imposed by state agencies.

(b) Loans made pursuant to this section shall have a term of not to exceed 30 years and shall be in a principal amount of not to exceed two hundred thousand dollars ($200,000).

(c) Bonds issued by the authority to fund the pilot program may be insured under the California Health Facility Construction Loan Insurance Law pursuant to Article 8 (commencing with Section 436.46) of Chapter 4 of Part 1 of Division 1 of the Health and Safety Code in an annual aggregate amount of one million dollars ($1,000,000) but not to exceed a maximum aggregate amount of three million dollars ($3,000,000).

(d) The authority shall submit a report to the Legislature on or before January 1, 1993, on the implementation of this section. The report shall contain an evaluation of the pilot project based upon the following criteria:

(1) Identify the regulatory requirements for which hospitals sought loans.

(2) Determine the extent to which the program enabled hospitals to comply with regulatory requirements.

(3) Identify the amount of total dollars hospitals saved on financing through this program versus other financing modes.

(4) Determine the success of hospitals paying back loans in a timely manner.

(e) 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. Article 8 (commencing with Section 436.46) is added to Chapter 4 of Part 1 of Division 1 of the Health and Safety Code, to read:

Article 8. Loan Guarantee for Small and Rural Hospitals

436.46. The office shall participate in the pilot program established by Section 15464 of the Government Code. At the request of the California Health Facilities Financing Authority, the office may insure bonds issued by the authority pursuant to Section 15464 of the Government Code to fund the pilot program. It is the intent of the Legislature that the office ensure these bonds unless there is a substantive basis indicating that the facility would default on repayment of the bonds.

436.47. This article 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.

CHAPTER 1423

An act to add Section 596.5 to the Penal Code, relating to animals.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 596.5 is added to the Penal Code, to read:

596.5. It shall be a misdemeanor for any owner or manager of an elephant to engage in abusive behavior towards the elephant, which behavior shall include the discipline of the elephant by any of the following methods:

(a) Deprivation of food, water, or rest.

(b) Use of electricity.

(c) Physical punishment resulting in damage, scarring, or breakage of skin.

(d) Insertion of any instrument into any bodily orifice.

(e) Use of martingales.

(f) Use of block and tackle.

SEC. 2. The provisions of this act shall not supersede or limit the application of any other provision of law.

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

CHAPTER 1424

An act to amend Section 15396.1 of the Government Code, relating to export financing.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 15396.1 of the Government Code is amended to read:

15396.1. Loan guarantees and insured export transactions made by the California Export Finance Office shall be secured by no less than a 25 percent reserve in the Export Finance Fund. The board may elect to require a higher reserve. The board shall adopt regulations on the terms and limits for loan guarantees, but in no case shall a loan guarantee exceed any of the following:

(a) Seventy percent of the required financing. However, the board may elect to guarantee up to 85 percent of the required financing provided there is evidence of lender credit exposure and adequate analysis of foreign commercial and political risk.

(b) Five hundred thousand dollars ($500,000).

(c) The lesser of five years or the useful life of the product.

CHAPTER 1425

An act to amend Section 6006 of, and to add Article 4.5 (commencing with Section 6070) to Chapter 4 of Division 3 of, the Business and Professions Code, relating to the State Bar of California.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 6006 of the Business and Professions Code is amended to read:

6006. Active members who retire from practice shall be enrolled as inactive members at their request.

Inactive members are not entitled to hold office or vote or practice law. Those who are enrolled as inactive members at their request may, on application and payment of all fees required, become active members. Those who are or have been enrolled as inactive members at their request are members of the State Bar for purposes of Section 15 of Article VI of the California Constitution. Those who are enrolled as inactive members pursuant to Section 6007 may become active members as provided in that section.

Inactive members have such other privileges, not inconsistent with this chapter, as the board of governors provides.

SEC. 2. Article 4.5 (commencing with Section 6070) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 4.5. Mandatory Continuing Legal Education

6070. (a) The State Bar shall request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer a mandatory continuing legal education program. The rule that the State Bar requests the Supreme Court to adopt shall require that, within designated 36-month periods, all active members of the State Bar shall complete at least 36 hours of legal education activities approved by the State Bar or offered by a State Bar approved provider, with eight of those hours in legal ethics or law practice management, four hours of which shall be legal ethics. If the California Supreme Court adopts a rule authorizing the State Bar to establish and administer the program, the State Bar shall establish and administer a mandatory continuing legal education program commencing on or after January 1, 1991. A member of the State Bar who fails to satisfy the mandatory continuing legal education requirements of the program authorized by the Supreme Court rule shall be enrolled as an inactive member pursuant to rules adopted by the Board of Governors of the State Bar.

(b) For purposes of this section, statewide associations of public agencies and incorporated, nonprofit professional associations of

attorneys, shall be certified as State Bar approved providers upon completion of an appropriate application process to be established by the State Bar. The certification may be revoked only by majority vote of the board, after notice and hearing, and for good cause shown. Programs provided by the California District Attorneys Association or the California Public Defenders Association, or both, including, but not limited to, programs provided pursuant to Title 1.5 (commencing with Section 11500) of Part 4 of the Penal Code, are deemed to be legal education activities approved by the State Bar or offered by a State Bar approved provider.

(c) Notwithstanding the provisions of subdivision (a), retired judges, officers and elected officials of the State of California, and full-time professors at law schools accredited by the State Bar of California, the American Bar Association, or both, shall be exempt from the provisions of this section. Full-time employees of the State of California, acting within the scope of their employment, shall be exempt from the provisions of this section. Nothing in this section shall prohibit the State of California, or any political subdivision thereof, from establishing or maintaining its own continuing education requirements for its employees.

SEC. 3. Where funding is not otherwise provided by law, it is the intent of the Legislature to encourage local public agencies to reimburse attorneys in their employ for costs incurred in complying with the requirements of this act.

CHAPTER 1426

An act to amend Section 1363 of the Government Code, relating to public officers.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 1363 of the Government Code is amended to read:

1363. (a) Unless otherwise provided, every oath of office certified by the officer before whom it was taken shall be filed within the time required as follows:

(1) The oath of all officers whose authority is not limited to any particular county, in the office of the Secretary of State.

(2) The oath of all officers elected or appointed for any county, and, except as provided in paragraph (4), of all officers whose duties are local, or whose residence in any particular county is prescribed by law, in the office of the county clerk of their respective counties.

(3) Each judge of a superior court and county clerk shall file a copy of his or her official oath, signed with his or her own proper

signature, in the office of the Secretary of State as soon as he or she has taken and subscribed his or her oath.

(4) The oath of all officers for any independent special district, as defined in Section 56044, in the office of the clerk or secretary of that district.

(b) Every oath of office filed pursuant to this section with the Secretary of State shall include the expiration date of the officer's term of office, if any. In the case of an oath of office for an appointed officer, if there is no expiration date set forth in the oath, or the officer leaves office before the expiration date, the appointing authority shall report in writing to the Secretary of State the officer's date of departure from office.

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

CHAPTER 1427

An act to amend Sections 11126, 20230, 20740, 22816.7, and 22816.8 of, and to add Section 20750.91 to, the Government Code, relating to public agencies making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 11126 of the Government Code, as amended by Chapter 177 of the Statutes of 1989, is amended to read:

11126. (a) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special

meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has

requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For purposes of this subdivision, the negotiator may be a member of the state body.

For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease.

Nothing in this subdivision shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(j) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the executive officer of the Franchise Tax Board.

(*l*) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body which invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues which could have a material effect on the net income of the corporation. For the purpose of real property investment decisions which may be considered in a closed session pursuant to this subdivision, a state

body shall also be exempt from the provision of subdivision (i) relating to the identification of real properties prior to the closed session.

(o) Nothing in this article shall be construed to prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation

For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(2) (A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body; or

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(3) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session If the closed session is pursuant to paragraph (1),

the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(r) Nothing in this article shall be construed to prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(s) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(t) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter which properly could be considered in closed session by the state body whose authority it exercises.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter which properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(w) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter which properly could be considered in a

closed session by the state body it advises.

(x) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions for either of the following:

(1) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

(2) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(y) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(z) This article shall not prevent the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the chief investment officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

SEC. 1.5 Section 20230 of the Government Code is amended to read:

20230. In addition to other records and accounts, the board shall keep such records and accounts as may be necessary to compute at any time:

(a) The total accumulated contributions of members.

(b) The total accumulated contributions of retired members and of deceased members, to or on account of whom payments involving life contingencies are paid, less the annuity payments made to the members

(c) The accumulated contributions of the state, school employers, and of contracting agencies held for the benefit of members on account of current service

(d) All other accumulated contributions of the state, school employers, and of contracting agencies, which shall include the amounts available to meet the obligation of the state, school employers, and of the contracting agencies, respectively, on account of benefits that have been granted to, or on account of, retired and deceased employees and on account of prior service of members.

For the purposes of this section, all employers subject to Chapter 6 (commencing with Section 20740) shall be deemed to be a single account with respect to their local miscellaneous members, all other employers not subject to Chapter 6 (commencing with Section 20740) shall be deemed to be a single account with respect to their local miscellaneous members, all employers of local safety members shall be deemed to be a single account with respect to those local

safety members, and all employers of school members shall be deemed to be a single account with respect to those school members.

However, the purposes of this section shall be construed in conformity with the individual employer contribution rates established pursuant to Section 20750.91.

SEC. 2. Section 20740 of the Government Code is amended to read:

20740. Except as provided in Section 20750.91, "employer" for purposes of this chapter means any contracting agency, except a contracting agency on and after the effective date of the contracting agency's election to be subject to any amendment of this part effective on or after the effective date of this section which provides that it is inapplicable to a contracting agency unless and until the agency elects to be subject thereto.

SEC. 3. Section 20750.91 is added to the Government Code, to read:

20750.91. Notwithstanding any other provision of this part, including, but not limited to, Sections 20230 and 20740, the board shall not combine the assets and liabilities of public agency employers into a single account for the purpose of setting a uniform rate of employer contributions for all public agency employers. Effective July 1, 1989, the rate at which a public employer's contribution to the system shall be fixed shall be based upon its own experience. Provisions of law that provide authority for the system to combine the assets and liabilities of public employers into a single account for purposes of establishing a uniform rate are superseded to the extent that they provide that authority. For purposes of this section only, references to public employers shall not be construed to include school employers.

SEC. 4. Section 22816.7 of the Government Code is amended to read:

22816.7. (a) As used in this section:

(1) "Exempt employee" means an employee exempt from civil service pursuant to subdivision (a), (c), (f), or (g) of Section 4 of Article VII of the California Constitution, or an exempt employee of the Attorney General or Legislative Counsel appointed pursuant to subdivision (m) of Section 4 of Article VII of the California Constitution.

(2) Notwithstanding Sections 22754, 22810, and 22953, "annuitant" means:

(A) A Member of the Legislature or an elective officer of the state whose office is provided by the Constitution, who has at least eight years of credited service, who permanently separates from state service both on or after January 1, 1988, and not more than 10 years before or 10 years after he or she attains his or her minimum age for service retirement under any state retirement system, who retires more than 120 days after separation from employment, and who is receiving any retirement allowance under any state retirement system to which the state makes contributions.

(B) An exempt employee, as defined in paragraph (1) of this subdivision who has at least 10 years of credited state service which includes at least two years of credited service while such an exempt employee, who permanently separates from state service both on or after January 1, 1988, and not more than 10 years before or 10 years after he or she attains his or her minimum age for service retirement under any state retirement system, who retires more than 120 days after separation from employment, and who is receiving any retirement allowance under any state retirement system to which the state makes contributions.

(3) Notwithstanding Sections 22754, 22810, and 22953, "state employee" means:

(A) A Member of the Legislature or an elective officer of the state whose office is provided by the Constitution, who has at least eight years of credited service, who permanently separates from state service both on or after January 1, 1988, and more than 10 years before he or she would attain his or her minimum age for service retirement under any state retirement system, but who elects pursuant to law to remain a member of a state retirement system supported, in whole or in part, by state funds, other than the University of California Retirement System.

(B) An exempt employee, as defined in paragraph (1) of this subdivision who has at least 10 years of credited state service which includes at least two years of credited service while such an exempt employee, who permanently separates from state service both on or after January 1, 1988, and more than 10 years before he or she would attain his or her minimum age for service retirement under any state retirement system, but who elects pursuant to law to remain a member of a state retirement system supported, in whole or in part, by state funds, other than the University of California Retirement System.

(b) Any person who becomes an annuitant, as defined in subdivision (a), may, upon assuming payment of any employee contributions, enroll in a health benefits plan and dental care plan without discrimination as to premium rates or benefit coverage at which time the state shall assume payment of employer contributions for that insurance coverage and the person shall thereafter be deemed an annuitant for the purposes of this part and Part 6 (commencing with Section 22952), notwithstanding Sections 22754, 22810, and 22953.

(c) A state employee, as defined by subdivision (a), who was on the effective date of his or her permanent separation from state service enrolled in a health benefits plan or dental care plan under this part or Part 6 (commencing with Section 22952), shall, upon the permanent separation from state service, be entitled to have his or her coverage continued without discrimination as to premium rates or benefits coverage upon assuming payment of the contributions otherwise required of the former employer on account of his or her enrollment and any employee contribution during the period he or

she is not yet receiving his or her retirement allowance. The state employee shall also pay an additional 2 percent of the contribution payments required to be paid by the state employee pursuant to this section to cover the administrative costs incurred by the public retirement system and the Department of Personnel Administration in administering the program provided by this section.

(d) Upon retirement and receipt of retirement allowance, a state employee described in subdivision (c) may elect to continue to be covered by the health benefits plan and dental care plan without discrimination as to premium rates or benefits coverage at which time the state shall assume payment of employer contributions for that insurance coverage and the person shall thereafter be deemed an annuitant for the purposes of this part and Part 6 (commencing with Section 22952).

SEC. 5. Section 22816.8 of the Government Code is amended to read:

22816.8. Any person who is an inactive member of the Legislators' Retirement System pursuant to Section 9355.2 and who has at least eight years of service credit may, upon assuming payment of all employee and employer contributions and an additional 2 percent thereof for the administrative cost incurred by the board and the Department of Personnel Administration in administering this section, enroll in the health benefits plan and dental care plan provided to members of the Legislators' Retirement System and, upon retirement shall thereafter be deemed an annuitant for purposes of this part and Part 6 (commencing with Section 22952), notwithstanding Sections 22754, 22810, and 22953.

Any person who, on January 1, 1989, is eligible to elect to enroll pursuant to this section shall exercise that election on or before April 30, 1989, and any person who after January 1, 1989, is for the first time eligible to elect to enroll pursuant to this section shall exercise that election within 120 days after separation from employment.

No person who enrolls pursuant to this section and subsequently terminates that enrollment may reenroll pursuant to this section.

SEC. 6. Sections 4 and 5 of this act do not constitute a change in, but are declaratory of, the existing law.

SEC. 7. It is the intent of the Legislature in enacting Section 20750.91 of the Government Code, to ensure that each public agency employer's contributions to the Public Employees' Retirement System are based upon a rate that reflects each public agency's unique experience and that no other public agency is affected, or influenced by, any other public agency's experience. In enacting that section, the Legislature recognizes the need to minimize rates for those employers with favorable experience, the need to maintain the financial stability of employers whose experience is unfavorable by not linking them with employers whose experience is more favorable, and to protect both employers and members from adverse consequences that can result from the imposition of a single contribution rate for all employers, irrespective of their individual

financial experience. It is further the intent of the Legislature that Section 20750.91 of the Government Code not include, or be applied to, school employers. The Legislature hereby ratifies the individual employer contribution ratesetting action which the Board of Administration approved effective July 1, 1989, and the related discontinuation of the single contribution rate.

SEC. 8. Section 1 of this bill incorporates amendments to Section 11126 of the Government Code proposed by both AB 1284 (Ch. 177, Stats. 1989) and SB 1458. It shall become operative on January 1, 1990, and only if (1) SB 1458 is enacted and both AB 1284 and SB 1458 become effective on January 1, 1990, (2) SB 1458 amends Section 11126 of the Government Code, and (3) this bill is enacted after SB 1458.

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 that the financially and fiscally detrimental effects of the public agency employer pool of the Public Employees' Retirement System may be eliminated at the earliest possible time and at the commencement of the 1989–90 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1428

An act to amend Section 4604 of the Civil Code and to amend Sections 208, 277, 278.5, and 279 of the Penal Code, relating to child abduction.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 4604 of the Civil Code is amended to read:

4604. (a) In any case where a petition to determine custody of a child has been filed in a court of competent jurisdiction, or where a temporary order pending determination of custody has been entered in accordance with Section 4600.1, and the whereabouts of a party in possession of the child are not known, or there is reason to believe that such party may not appear in the proceedings although ordered to appear personally with the child pursuant to Section 5160, the district attorney shall take all actions necessary to locate such party and the child and to procure compliance with the order to appear with the child for purposes of adjudication of custody. The petition to determine custody may be filed by the district attorney.

(b) In any case where a custody or visitation decree has been

entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the decree, the district attorney shall take all actions necessary to locate and return the child and the person who violated the decree and the child and to assist in the enforcement of the custody or visitation decree or other order of the court by use of any appropriate civil or criminal proceeding.

(c) In performing the functions described in subdivisions (a) and (b), the district attorney shall act on behalf of the court and shall not represent any party to the custody proceedings. If the district attorney represents to the court, by a written declaration under penalty of perjury, that a temporary custody order is needed to recover a child, who is being detained or concealed in violation of a court order, or a parent's right to custody, the court may issue an order, placing temporary sole physical custody in the parent or person recommended by the district attorney to facilitate the return of the child to the jurisdiction of the court, pending further hearings. If the court determines that it is not in the best interests of the child to place temporary sole physical custody in one of the above persons, it shall appoint a person to take charge of the child and return him or her to the jurisdiction of the court.

SEC. 2. Section 208 of the Penal Code is amended to read:

208. (a) Kidnapping is punishable by imprisonment in the state prison for three, five, or eight years.

(b) If the person kidnapped is under 14 years of age at the time of the commission of the crime, the kidnapping is punishable by imprisonment in the state prison for 5, 8, or 11 years. This subdivision is not applicable to the taking, detaining, or concealing, of a minor child by a biological parent, a natural father, as specified in subdivision (a) of Section 7004 of the Civil Code, an adoptive parent, or a person who has been granted access to the minor child by a court order.

SEC. 3. Section 277 of the Penal Code is amended to read:

277. In the absence of a court order determining rights of custody or visitation to a minor child, every person having a right of custody of the child who maliciously takes, detains, conceals, or entices away that child within or without the state, without good cause, and with the intent to deprive the custody right of another person or a public agency also having a custody right to that child, shall be punished by imprisonment in the county jail for a period of not more than one year, a fine of one thousand dollars ($1,000), or both, or by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars ($10,000), or both.

A subsequently obtained court order for custody or visitation shall not affect the application of this section.

As used in this section, "good cause" means a good faith and reasonable belief that the taking, detaining, concealing, or enticing away of the child is necessary to protect the child from immediate bodily injury or emotional harm. The person who takes, detains, or conceals the child shall file a report with the law enforcement agency

of such action within a reasonable time in the jurisdiction where the child had been living, setting forth the basis for the immediate bodily injury or emotional harm to the child. The address of the parent, or a person who has been granted access to the minor child by a court order, who takes, detains, or conceals the child, with good cause, shall remain confidential until released at the discretion of the district attorney or by court order.

SEC. 4. Section 278.5 of the Penal Code is amended to read:

278.5. Every person who has a right to physical custody of or visitation with a child pursuant to an order, judgment, or decree of any court which grants another person, guardian, or public agency right to physical custody of or visitation with that child, and who within or without the state detains, conceals, takes, or entices away that child with the intent to deprive the other person of that right to custody or visitation shall be punished by imprisonment in the state prison for 16 months, or two or three years, a fine of not more than ten thousand dollars ($10,000), or both; or by imprisonment in a county jail for a period of not more than one year, a fine of not more than one thousand dollars ($1,000), or both.

SEC. 5. Section 279 of the Penal Code is amended to read:

279. (a) A peace officer investigating a report of a violation of Section 277, 278, or 278.5 may take a minor child into protective custody if it reasonably appears to the officer that any person unlawfully will flee the jurisdictional territory with the minor child.

(b) A child who has been detained or concealed shall be returned to the person, guardian, or public agency having lawful charge of the child, or to the court in which a custody proceeding is pending, or to the probation department of the juvenile court in the county in which the victim resides. Notwithstanding any other provision of law, when a person is arrested for an alleged violation of Section 277, 278, or 278.5 the court shall, at the time of the arraignment, impose the condition that the child shall be returned to the person or public agency having lawful charge of the child, and the court shall specify the date by which the child shall be returned. If conflicting custodial orders exist within this state, or between this state and a foreign state, the court shall set a hearing within five court days to determine which court has jurisdiction under the laws of this state, if the conflicting custodial orders are within this state, or if the conflict exists between this state and a foreign state, the court shall determine which state has subject matter jurisdiction to issue a custodial order under the laws of this state, the Uniform Child Custody Jurisdiction Act (Title 9 (commencing with Section 5150) of Part 5 of the Civil Code), or federal law, if applicable. At the conclusion of the hearing, the court shall enter an order as to which custody order is valid and is to be enforced. If the child has not been returned at the conclusion of the hearing, the court shall set a date within a reasonable time by which the child shall be returned to the person or agency having lawful charge of the child, and order the defendant to comply by this date, or to show cause on that date why

he or she has not returned the child as directed. The court shall only enforce its order, or any subsequent orders for the return of the child, under subdivision (a) of Section 1219 of the Code of Civil Procedure, to ensure that the child is promptly placed with the person or agency having lawful charge of the child. An order adverse to either the prosecution or defense is reviewable by a writ of mandate or prohibition addressed to the appropriate court.

(c) The offenses enumerated in Sections 277, 278, and 278.5 are continuous in nature, and continue for so long as the minor child is concealed or detained.

(d) Any expenses incurred in returning the child shall be reimbursed as provided in Section 4605 of the Civil Code. Those expenses, and costs reasonably incurred by the victim, shall be assessed against any defendant convicted of a violation of Section 277, 278, or 278.5.

(e) Pursuant to Sections 27 and 778, violation of Section 277, 278, or 278.5 is punishable in California, whether the intent to commit the offense is formed within or without the state, if the child was a resident of California or present in California at the time of the taking, if the child thereafter is found in California, or if one of the parents, or a person granted access to the minor child by a court order, is a resident of California at the time of the alleged violation of Section 277, 278, or 278.5 by a person who was not a resident of or present in California at the time of the alleged offense.

(f) For purposes of Sections 277, 278, and 278.5:

(1) "A person having a right of custody" means the legal guardian of the child, a person who has a parent and child relationship with the child pursuant to Section 197 of the Civil Code, or a person or an agency that has been granted custody of the child pursuant to a court order.

(2) A "right of custody" means the right to physical custody of the child. In the absence of a court order to the contrary, a parent loses his or her right of custody of the child to the other parent if the parent having the right of custody is dead, is unable or refuses to take the custody, or has abandoned his or her family.

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

CHAPTER 1429

An act to add Division 10.7 (commencing with Section 11999) to the Health and Safety Code, relating to alcohol and drug programs.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Division 10.7 (commencing with Section 11999) is added to the Health and Safety Code, to read:

DIVISION 10.7. ILLEGAL USE OF DRUGS AND ALCOHOL

11999. The Legislature finds and declares all of the following:

(a) The Legislature has established various drug- and alcohol-related programs which provide for education, prevention, intervention, treatment, or enforcement.

(b) The Legislature has classified certain substances as controlled substances and has defined the lawful and unlawful use of controlled substances which are commonly referred to as, but not limited to, anabolic steroids, marijuana, and cocaine.

(c) The Legislature has classified certain substances as imitation controlled substances which are commonly referred to as, but not limited to, designer drugs.

(d) The Legislature has determined that the possession with the intent to be under the influence, or being under the influence of toluene, or any substance or material containing toluene, or any substance with similar toxic qualities, is unlawful. Some substances or materials containing toluene, or substances with similar toxic qualities are commonly referred to, but not limited to, inhalants such as cement, glue, and paint thinner.

(e) The Legislature has determined that the purchase, possession, or use of alcohol by persons under 21 years of age is unlawful.

(f) Public and private agencies that provide information pertaining to the drug- and alcohol-related programs provide mixed messages and misinformation relating to the unlawful use of drugs and alcohol. It is the intent of the Legislature that the messages and information provided by the drug and alcohol programs promote no unlawful use of any drugs or alcohol. Mixed messages mean communications discussing how to use or when to use unlawful drugs or alcohol.

(g) Any material, curricula, teachings, or promotion of responsible use, if the use is unlawful, of drugs or alcohol is inconsistent with the law.

(h) The "no unlawful use" message applies to all drug and alcohol programs for the people of the State of California. These materials are to teach and promote that any unlawful use of drugs and alcohol

is illegal and dangerous.

11999.1. For the purpose of this division, the following definitions apply:

(a) "Drug" means all of the following:

(1) Any controlled substance as defined in Division 10 (commencing with Section 11000).

(2) Any imitation controlled substance as defined in Chapter 1 (commencing with Section 11670) of Division 10.1.

(3) Toluene or any substance or material containing toluene or any substance with similar toxic qualities as set forth in Sections 380 and 381 of the Penal Code.

(b) "Drug- or alcohol-related program" means any program designed to reduce the unlawful use of, or assist those who engage in the unlawful use of, drugs or alcohol, whether through education, prevention, intervention, treatment, enforcement, or other means.

(c) "Local agency" shall include, but is not limited to, a county, a city, a city and county, and school district.

(d) "State agency" shall include the State Department of Alcohol and Drug Programs, the State Department of Education, the Department of Justice, the Office of Criminal Justice Planning, and the Office of Traffic Safety. Any other state agency or department may comply with this division.

11999.2. (a) Notwithstanding any other provision of law, commencing July 1, 1990, no state funds shall be encumbered by a state agency for allocation to any entity, whether public or private, for a drug- or alcohol-related program, unless the drug- or alcohol-related program contains a component that clearly explains in written materials that there shall be no unlawful use of drugs or alcohol. No aspect of a drug- or alcohol-related program shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol.

(b) All aspects of a drug- or alcohol-related program shall be consistent with the "no unlawful use" message, including, but not limited to, program standards, curricula, materials, and teachings.

These materials and programs may include information regarding the health hazards of use of illegal drugs and alcohol, concepts promoting the well-being of the whole person, risk reduction, the addictive personality, development of positive self-esteem, productive decisionmaking skills, and other preventive concepts consistent with the "no unlawful use" of drugs and alcohol message.

(c) The "no unlawful use" of drugs and alcohol message contained in drug- or alcohol-related programs shall apply to the use of drugs and alcohol prohibited by law.

(d) This section does not apply to any program funded by the state that provides education and prevention outreach to intravenous drug users with AIDS or AIDS-related conditions, or persons at risk of HIV-infection through intravenous drug use.

11999.3. (a) A state agency that distributes state funds to an entity, whether public or private, for a drug- or alcohol-related

program shall establish and provide guidelines and procedures for the entity to use to ensure compliance with this division. If the drug or alcohol program fails to satisfy the guidelines adopted by the state agency, the drug or alcohol program shall not receive state funds from the state agency. A state agency that provides or develops drug- or alcohol-related programs shall also comply with this division.

(b) Each state and local agency which distributes funds shall establish a reasonable time frame for each program to comply with the requirements of this division.

(c) A drug- or alcohol-related program that receives state funds from a local agency shall file with the local agency which distributes the state funds a written assurance signed by the person responsible for operating the drug- or alcohol-related program stating all of the following:

(1) The person understands the requirements of Section 11999.2.

(2) The person has reviewed those aspects of the program to which Section 11999.2 applies.

(3) Those aspects of the program to which Section 11999.2 applies meet the requirements of Section 11999.2.

(d) Every state or local agency distributing funds to which this division applies shall provide a process for appealing a determination to deny or terminate funding to a drug- or alcohol-related program based upon noncompliance with the requirements of this division. When funding is allocated to counties for distribution to local agencies, the director of the state agency distributing the funds shall develop and distribute to counties guidelines for the development of a local appeals process.

(e) A local agency which receives state funds from a state agency for establishing a drug- or alcohol-related program and which has discretionary authority for how the local agency spends the state funds, shall consider the requirements of Section 11999.2 in establishing the drug- or alcohol-related program.

(f) School district personnel who have authority to select and purchase instructional materials, curricula, or both, for the purpose of teaching drug or alcohol use prevention, or both, shall follow the requirements specified in Section 11999.2.

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.

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

California Constitution.

SEC. 3. Sections 1 and 2 of this act shall become operative on July 1, 1990.

CHAPTER 1430

An act to amend Sections 14005.7, 14005.12, 14005.16, 14006, 14006.2, 14006.3, and 14015 of, to add Sections 14002, 14005.11, 14005.17, and 14006.6 to, and to repeal and add Section 14006.4 of, the Welfare and Institutions Code, relating to Medi-Cal, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 14002 is added to the Welfare and Institutions Code, to read:

14002. For the purposes of this article, the following definitions shall apply, commencing January 1, 1990:

(a) "Community spouse" means the spouse of an institutionalized spouse.

(b) "Institutionalized individual" means the same as defined in Section 1917(c) of Title XIX of the federal Social Security Act (42 U S C. Sec 1396p(c) (3))

(c) "Institutionalized spouse" means any individual to whom all of the following apply:

(1) The individual is in a medical institution or nursing facility and is likely to meet that requirement for at least 30 consecutive days.

(2) The individual is married to a spouse who is not in a medical institution or nursing facility.

(3) Except for purposes of Sections 14005.7, 14005.12, 14005.16, and 14005.17, an individual who is admitted to a medical institution or nursing facility on or after September 30, 1989, and who applies for Medi-Cal benefits on or after January 1, 1990.

(d) "Medical institution" means the same as defined in Section 435.1009 of Title 42 of the Code of Federal Regulations.

(e) "Nursing facility" means, to the extent permitted by federal law, a skilled nursing facility or intermediate care facility.

SEC. 2. Section 14005.7 of the Welfare and Institutions Code is amended to read:

14005.7. (a) Medically needy persons and medically needy family persons are entitled to health care services under Section 14005 providing all eligibility criteria established pursuant to this chapter are met.

(b) Except as otherwise provided in this chapter or in Title XIX

of the federal Social Security Act, no medically needy family person, medically needy person or state-only Medi-Cal persons shall be entitled to receive health care services pursuant to Section 14005 during any month in which his or her share of cost has not been met.

(c) In the case of a medically needy person, monthly income, as determined, defined, counted, and valued, in accordance with Title XIX of the federal Social Security Act, in excess of the amount required for maintenance established pursuant to Section 14005.12, exclusive of any amounts considered exempt as income under Chapter 3 (commencing with Section 12000), less amounts paid for Medicare and other health insurance premiums shall be the share of cost to be met under Section 14005.9.

(d) In the case of a medically needy family person or state-only Medi-Cal person, monthly income, as determined, defined, counted, and valued, in accordance with Title XIX of the federal Social Security Act, in excess of the amount required for maintenance established pursuant to Section 14005.12, exclusive of any amounts considered exempt as income under Chapter 2 (commencing with Section 11200), less amounts paid for Medicare and other health insurance premiums shall be the share of cost to be met under Section 14005.9.

(e) In determining the income of a medically needy person residing in a licensed community care facility, income shall be determined, defined, counted, and valued, in accordance with Title XIX of the federal Social Security Act, any amount paid to the facility for residential care and support that exceeds the amount needed for maintenance shall be deemed unavailable for the purposes of this chapter.

SEC. 3. Section 14005.11 is added to the Welfare and Institutions Code, to read:

14005.11. (a) To the extent required by federal law for qualified Medicare beneficiaries, the department shall pay the premiums, deductibles, and coinsurance for elderly and disabled persons entitled to benefits under Title XVIII of the federal Social Security Act, whose income does not exceed the federal poverty level and whose resources do not exceed 200 percent of the Supplemental Security Income program standard.

(b) The department shall, in addition to subdivision (a), pay applicable additional premiums, deductibles, and coinsurance for drug coverage extended to qualified Medicare beneficiaries.

(c) The deductible payments required by subdivision (b) may be covered by providing the same drug coverage as offered to categorically needy recipients, as defined in Section 14050.1.

SEC. 4. Section 14005.12 of the Welfare and Institutions Code is amended to read:

14005.12. (a) For the purposes of Sections 14005.4 and 14005.7, the department shall establish the income levels for maintenance need at the lowest levels that reasonably permit medically needy persons to meet their basic needs for food, clothing, and shelter, and

for which federal financial participation will still be provided under Title XIX of the federal Social Security Act. It is the intent of the Legislature that the income levels for maintenance need for medically needy aged, blind, and disabled adults, in particular, shall be based upon amounts that adequately reflect their needs.

(b) In the case of a single individual, the amount of the income level for maintenance per month shall be 80 percent of the highest amount that would ordinarily be paid to a family of two persons, without any income or resources, under subdivision (a) of Section 11450, multiplied by the federal financial participation rate.

(c) In the case of a family of two adults, the income level for maintenance per month shall be the highest amount that would ordinarily be paid to a family of three persons without income or resources under subdivision (a) of Section 11450, multiplied by the federal financial participation rate

(d) For the purposes of Sections 14005.4 and 14005.7, for a person in a medical institution or nursing facility, the amount considered as required for maintenance per month shall be computed in accordance with, and for those purposes required by, Title XIX of the federal Social Security Act, and regulations adopted pursuant thereto. Those amounts shall be computed pursuant to regulations which include providing for the following purposes:

(1) Personal and incidental needs in the amount of not less than thirty-five dollars ($35) per month while a patient. The department may, by regulation, increase this amount as necessitated by increasing costs of personal and incidental needs. A long-term health care facility shall not charge an individual for the laundry services or periodic hair care specified in Section 14110.4

(2) The upkeep and maintenance of the home.

(3) The support and care of his or her minor children, or any disabled relative for whose support he or she has contributed regularly, if there is no community spouse.

(4) If the person is an institutionalized spouse, for the support and care of his or her community spouse, minor or dependent children, dependent parents, or dependent siblings of either spouse, provided the individuals are residing with the community spouse.

(5) The community spouse monthly income allowance shall be established at the maximum amount permitted in accordance with Section 1924(d)(1)(B) of Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396r-5(d)(1)(B)).

(6) The family allowance for each family member residing with the community spouse shall be computed in accordance with the formula established in Section 1924(d)(1)(C) of Title XIX of the Social Security Act (42 U.S.C. Sec. 1396r-5(d)(1)(C)).

(e) For the purposes of Sections 14005.4 and 14005.7, with regard to a person in a licensed community care facility, the amount considered as required for maintenance per month shall be computed pursuant to regulations adopted by the department which provide for the support and care of his or her spouse, minor children,

or any disabled relative for whose support he or she has contributed regularly.

(f) The income levels for maintenance per month, except as specified in subdivisions (b) to (d), inclusive, shall be equal to the highest amounts that would ordinarily be paid to a family of the same size without any income or resources under subdivision (a) of Section 11450, multiplied by the federal financial participation rate.

(g) The "federal financial participation rate," as used in this section, shall mean 133⅓ percent, or such other rate set forth in Section 1903 of the federal Social Security Act (42 U.S.C. Sec. 1396(b)), or its successor provisions.

(h) The income levels for maintenance per month shall not be decreased to reflect the presence in the household of persons receiving forms of aid other than Medi-Cal.

(i) When family members maintain separate residences, but eligibility is determined as a single unit under Section 14008, the income levels for maintenance per month shall be established for each household in accordance with subdivisions (b) to (h), inclusive. The total of these levels shall be the level for the single eligibility unit.

(j) The income levels for maintenance per month established pursuant to subdivisions (b) to (i), inclusive, shall be calculated on an annual basis, rounded to the next higher multiple of one hundred dollars ($100), and then prorated.

SEC. 5. Section 14005.16 of the Welfare and Institutions Code is amended to read:

14005.16. (a) In determining the eligibility of a married individual pursuant to Section 14005.4 or 14005.7, who resides in a skilled nursing facility or intermediate care facility, and who is in a Medi-Cal family budget unit separate from that of his or her spouse, the community property interest of the noninstitutionalized spouse in the income of the married individual shall not be considered income available to that individual.

(b) For purposes of this section, there shall be a presumption, rebuttable by either spouse, that each spouse has a community property interest in one-half of the total monthly income of both spouses.

(c) (1) This section shall not become operative unless Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is amended to authorize the consideration of state community property laws in determing eligibility or the federal government authorizes the state to apply community property laws in that determination

(2) The department shall report to the appropriate committees of the Legislature upon the occurrence of the amendment of federal law or the receipt of federal approval, as specified in paragraph (1).

SEC. 5.5. Section 14005.17 is added to the Welfare and Institutions Code, to read:

14005.17. (a) In determining the eligibility of an

institutionalized spouse pursuant to Section 14005.4 or 14005.7, who resides in a medical institution or nursing facility, and who is in a Medi-Cal family budget unit separate from that of his or her spouse, the community property interest of either spouse in the income of the other spouse shall not be considered when determining eligibility for Medi-Cal benefits.

(b) In the case of an institutionalized spouse, income shall be determined in accordance with subsections (b) and (d) of Section 1924 of the federal Social Security Act and regulations adopted pursuant thereto.

(c) (1) This section shall remain operative only until Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is amended to authorize the consideration of state community property law in determining eligibility under this chapter, or the federal government authorizes the consideration of state community property in that determination.

(2) The department shall report to the appropriate committees of the Legislature upon the occurrence of the amendment of federal law or receipt of federal authorization as specified in paragraph (1).

SEC. 6. Section 14006 of the Welfare and Institutions Code is amended to read:

14006. (a) This section applies to medically needy persons, medically needy family persons, and state-only Medi-Cal persons.

(b) For the purposes of this section, the term "principal residence" means the home, including a multiple-dwelling unit, in which the individual resides or formerly resided. The home will continue to be considered the principal residence if any of the following is applicable:

(1) During any absence, the individual intends to return to the home.

(2) The individual lives in a nursing facility or a medical institution and intends to return home.

(3) The individual's spouse or a dependent relative of the individual continues to reside in the home during the individual's absence.

(4) The individual does not have the right, authority, power, or legal capacity to liquidate the property, but a bona fide effort is being made to attain the right, authority, power, or legal capacity to liquidate the property.

(5) The property cannot readily be converted to cash but a bona fide effort is being made to sell the property, in which case the state shall, subject to notice and an opportunity for a hearing, have a lien against the property, to the extent permitted by federal law, for the cost of medical services.

The lien shall be recorded, and from the date of recording, shall have the force, effect, and priority of a judgment lien.

(6) If it is a multiple-dwelling unit, one unit of which is occupied by the applicant or recipient, any unit not occupied by the applicant or recipient is producing income for the individual or family

reasonably consistent with its value.

(7) It is inhabited by any sibling or child of the recipient who has continuously resided in the property since at least one year prior to the date the owner entered a nursing facility, or in a medical institution.

For purposes of this subdivision, "bona fide effort" means that the property shall be listed with a licensed real estate broker at the value determined to be the fair market value by a qualified real estate appraiser and the applicant or recipient provides evidence that a continuous effort is being made to sell the property, offers at fair market value are accepted, and all offers are reported

(c) For purposes of determining eligibility under this part, resources shall be determined, defined, counted, and valued in accordance with the federal law governing resources under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.). Resources exempt under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) shall not be considered in determining eligibility. A community spouse may retain nonexempt resources to the maximum extent permitted under Title XIX of the federal Social Security Act (42 U.S.C. Sec 1396 et seq.). Medically needy individuals and families may retain nonexempt resources to the extent permitted under Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq) In addition, the principal residence as defined in subdivision (b) shall be exempt.

(d) The director, to meet the requirements of the federal Social Security Act and to ensure the highest percentage of federal financial participation in the program provided by this chapter, may decrease or increase the amounts set forth herein.

(e) (1) If the holdings are in the form of real property, the value shall be the assessed value, determined under the most recent county property tax assessment, less the unpaid amount of any encumbrance of record.

(2) If the real property other than the home is not producing income reasonably consistent with its value, the applicant or recipient shall be allowed reasonable time to begin producing such income from the property. If the property cannot produce reasonable income or be sold based on the market value, the applicant or recipient shall be allowed to submit evidence from a qualified real estate appraiser which indicates the value for which the property can be adequately utilized or sold. If the applicant or recipient provides evidence that the only method of adequately utilizing the property is sale, and the property has not been sold at market value during a reasonable period of time, the property shall be considered to be adequately utilized provided it is listed with a licensed real estate broker at the value determined to be the fair market value by a qualified real estate appraiser and the applicant or recipient provides evidence that a bona fide and continuous effort is being made to sell the property.

(3) If federal requirements permit a person to whom this

subdivision applies to own an automobile of greater value than is permitted in determining eligibility for aid under Chapter 3 (commencing with Section 12000), the department shall adopt regulations authorizing that higher allowance.

(f) Any mortgage or note secured by a deed of trust shall be deemed real property if its value does not exceed six thousand dollars ($6,000) and it is obtained by the applicant or recipient, or in combination with his or her spouse, through the sale of such real property.

(g) If the holdings consist of money on deposit, the value shall be the actual amount thereof. If the holdings are in any other form of personal property or investment, except life insurance, the value shall be the conversion value as of the date of application or the anniversary date of such application. If the holdings are in the form of life insurance, the value shall be the cash value as of the policy anniversary nearest the date of such application.

(h) The value of property holdings shall be determined as of the date of application and, if the person is found eligible, this determination shall establish the amount of such holdings to be considered during the ensuing 12 months except a new determination to govern during the succeeding 12 months shall be made on the first anniversary date of the application or such alternate date as may be established following the acquisition of additional holdings as provided in the following paragraph and on each succeeding anniversary date thereafter.

(i) If any person shall by gift, inheritance, or other manner, acquire additional holdings during any such interval, other than from his or her own earnings, he or she shall immediately report such acquisition, and the anniversary date shall become the date of such acquisition.

(j) If any provision of this section does not comply with federal requirements, the provision shall become inoperative to the extent that it is not in compliance with federal requirements pursuant to Section 11003.

SEC. 7. 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 (42 U.S.C. Sec. 1396 et seq.) 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 nonexempt 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 nonexempt 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. The statement provided for in this subdivision shall also be furnished to each individual admitted to a skilled nursing or intermediate care facility, along with, but separately from, the statement required under Section 72527 of Title 22 of the California Code of Regulations.

(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. In the event that the married individual expends his or her resources for expenses associated with or for improvements to property, those expenditures shall be considered to be for his or her own benefit only to the extent that the expenditures are proportionate to the ownership interest the individual has in the property. 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.

(f) This section shall not apply to an institutionalized spouse.

(g) This section shall apply to the full extent to an institutionalized spouse if Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is amended to authorize the consideration of state community property law in determining eligibility under this chapter, or the federal government authorizes the state to apply community property laws in making that determination.

(h) (1) Subdivision (f) shall become inoperative if the federal government amends Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) to allow state community property laws to be considered for Medi-Cal eligibility purposes, or the federal government authorizes the state to apply community property laws in making that determination.

(2) The department shall report to the appropriate committees of the Legislature upon the occurrence of the amendment of federal law or receipt of federal authorization as specified in paragraph (1)

SEC. 8. Section 14006.3 of the Welfare and Institutions Code is amended to read:

14006.3. The department, at the time of application or the assessment pursuant to Section 14006.6, and any nursing facility or medical institution 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 9 Section 14006.4 of the Welfare and Institutions Code is repealed.

SEC. 9.5. 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.

(e) (1) This section shall apply to institutionalized spouses only if Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq) is amended to authorize the consideration of state community property law in determining eligibility under this chapter, or the federal government authorizes the state to apply community property laws in making that determination.

(2) The department shall report to the appropriate committees of

the Legislature upon the occurrence of the amendment of federal law or the receipt of federal authorization to apply community property law as specified in paragraph (1).

SEC. 10. Section 14006.6 is added to the Welfare and Institutions Code, to read:

14006.6. (a) To the extent required by Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and regulations adopted pursuant thereto, upon the request of either an institutionalized spouse or a community spouse, and upon receipt of relevant documentation of resources, the department shall promptly assess and document the total value of the couple's resources to the extent either the institutionalized spouse or the community spouse has an ownership interest. Upon completion of the assessment and documentation, the department shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment.

(b) If the assessment is not part of an application for Medi-Cal, the department may, as a condition of providing the assessment, require payment of a fee not to exceed the reasonable expenses of providing and documenting the assessment.

(c) For purposes of completing the assessment, resources shall be determined, defined, counted, and valued in accordance with subdivision (c) of Section 14006.

(d) At the time of providing the copy of the assessment to the couple, the department shall include a notice indicating that either spouse will have a right to a fair hearing to the extent required by federal law.

(e) (1) This section shall remain operative only until Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) is amended to authorize the consideration of state community property law in determining eligibility under this chapter, or the federal government authorizes the state to apply community property laws in making that determination.

(2) The department shall report to the appropriate committees of the Legislature upon the occurrence of the amendment of federal law or the receipt of federal authorization to apply community property law, as specified in paragraph (1).

SEC. 11. Section 14015 of the Welfare and Institutions Code is amended to read:

14015. (a) The providing of health care under this chapter shall not impose any limitation or restriction upon the person's right to sell, exchange or change the form of property holdings nor shall the care provided constitute any encumbrance on the holdings. However, the disposal of resources for less than fair market value made by an institutionalized individual shall, to the extent and under the circumstances set forth in Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) and regulations adopted thereto, result in a period of ineligibility for aid.

(b) Any item of durable medical equipment which is purchased

for a recipient pursuant to this chapter exclusively with Medi-Cal program funds shall be returned to the department when the department determines that the item is no longer medically necessary for the recipient. Items of durable equipment shall include, but are not limited to, wheelchairs and special hospital beds.

SEC. 12. The State Department of Health Services shall adopt regulations for the implementation of this act as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. These regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 13. The sum of fifty thousand dollars ($50,000) of the amount appropriated by Item 4260-101-001(b)50.10 of Chapter 93 of the Statutes of 1989 is reappropriated in augmentation of Item 4260-001-001 of Chapter 93 of the Statutes of 1989 and fifty thousand dollars ($50,000) of the amount appropriated by Item 4260-101-890 of Chapter 93 of the Statutes of 1989 is reappropriated in augmentation of Item 4260-001-890 of Chapter 93 of the Statutes of 1989, for an augmentation of the merit system contract in order for adequate personnel services to be provided to county welfare departments which rely on state-administered personnel services.

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:

In order to comply by January 1, 1990, with recently enacted federal legislation requiring protection of the spouses of institutionalized individuals against impoverishment, it is essential that this act take effect immediately.

CHAPTER 1431

An act to amend Section 10005 of, and to add Section 10406 to, the Health and Safety Code, relating to birth registrations.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 10005 of the Health and Safety Code is amended to read:

10005. (a) All physicians, informants, funeral directors, clergy, or judges and all other persons having knowledge of the facts, shall supply upon the prescribed forms any information that they possess

regarding any birth, fetal death, death, or marriage upon demand of the state or local registrar.

(b) All physicians, informants, funeral directors, clergy, judges, public employees, or other persons who supply upon prescribed forms information that they possess regarding any birth, fetal death, death, or marriage shall in no case use a derogatory, demeaning, or colloquial racial or ethnic descriptor.

SEC. 2. Section 10406 is added to the Health and Safety Code, to read:

10406. (a) A person born in this state whose birth is registered in this state, or the person's conservator, or if a minor, the person's parent or guardian, may submit a written request to the state registrar for a new birth certificate on the ground that his or her existing birth certificate contains a derogatory, demeaning, or colloquial racial descriptor. For purposes of this section, a derogatory, demeaning, or colloquial racial descriptor means any term which the registrant determines is insulting to a racial group.

(b) The state registrar shall review the request, and if the request identifies the term which the registrant has determined is a derogatory, demeaning, or colloquial racial descriptor, identifies the accurate racial descriptor, and is accompanied with the payment of the fee required by Section 10613, then the state registrar shall issue a new birth certificate with the accurate racial descriptor identified in the request and shall transmit copies of the new birth certificate to the following:

(1) The local registrar and county recorder in whose offices copies of the previously issued birth certificate are on file. Upon receipt of the new birth certificate, the local registrar and county recorder shall transmit any copies of the previously issued birth certificate to the state registrar if it is practical for him or her to do so. If it is impractical for him or her to forward all the copies to the state registrar, he or she shall effectually seal a cover over the copy in a manner as not to deface or destroy the copy and forward a verified statement of his or her action to the state registrar.

(2) The registrant.

(c) The new birth certificate shall supplant any previously issued birth certificate registered for the registrant and shall be the only birth certificate of the registrant open to public inspection. The request and previously issued birth certificate shall remain as part of the records of the state registrar. All records and information referred to in this section, other than the newly issued birth certificate, shall be available only upon the written request of the registrant or an order of a court of competent jurisdiction

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1432

An act to amend Sections 14088.4 and 14115 of the Welfare and Institutions Code, relating to Medi-Cal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Section 14088.4 of the Welfare and Institutions Code is amended to read:

14088.4. (a) No reimbursement shall be provided for any recipient who is receiving case management services pursuant to this article, for any services, except emergency services and dental services, not authorized pursuant to case management decisions made by the appropriate primary care provider.

(b) Notwithstanding subdivision (a), a provider shall be reimbursed for covered services rendered to a beneficiary, when the department's automated eligibility verification system, developed pursuant to Section 14042, fails to indicate that the beneficiary is subject to receiving case management services, provided that claims for these services meet all other requirements for valid claims under the program.

SEC. 2. Section 14115 of the Welfare and Institutions Code is amended to read:

14115. (a) Bills for service under this chapter shall be submitted not more than six months after the month in which the service is rendered, and shall be in the form prescribed by the director, except that in the event the patient does not identify himself or herself to the provider as a Medi-Cal beneficiary within four months after the month in which the service was rendered, the provider shall be entitled to submit his or her statement at any time within 60 days after that date certified by the provider as the date the patient was first identified as a Medi-Cal beneficiary. However, the date certified by the provider as the date the patient was first so identified shall not be later than one year after the month in which the service was rendered. Whenever a provider has submitted a claim to a liable third party, the provider shall have one year after the month in which the service is rendered for submission of the bill. Whenever

a legal proceeding has been commenced with either an administrative or judicial tribunal concerning a bill for which the provider is attempting to obtain payment from a liable third party, the provider shall have one year in which to submit the bill after the month in which the services have been rendered. A copy of the pleadings shall be conclusively presumed to be sufficient evidence of commencement of a legal proceeding.

(b) Further, the director may, where he or she finds that delay in the submission of bills was caused by circumstances beyond the control of the provider, extend the period for submission of bills for a period not to exceed one year.

(c) For the purposes of this section, identification of a patient as a Medi-Cal beneficiary shall mean presentation to the provider of the patient's Medi-Cal card.

(d) No further followup shall be required, after the provider receives acknowledgment of a claim inquiry from the fiscal intermediary, until the claim is paid or denied, except that this period shall not exceed one year from the date of acknowledgment. On or after one year from the date of acknowledgment the next level of appeal shall be utilized by the provider.

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 render less burdensome the payment of valid Medi-Cal claims, and thereby ensure access to basic health care for Californians otherwise unable to obtain needed medical services, it is necessary that this act take effect immediately.

CHAPTER 1433

An act to amend Section 14132 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 2, 1989. Filed with Secretary of State October 2, 1989.]

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

SECTION 1. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture,

and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Skilled nursing facility services, including respiratory care, podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in skilled nursing facilities are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal Drug Formulary and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in an intermediate care facility or a skilled nursing facility.

(g) Blood and blood derivatives are covered.

(h) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's crippled children services program.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered,

subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Intermediate care facility services, including physician services, nurse practitioner services pursuant to Section 14115.6, and prescribed drugs as described in subdivision (d) are covered, subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy and audiology services for patients in intermediate care facilities are covered subject to utilization controls.

(o) Family planning services are covered, subject to utilization controls.

(p) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitative services, in a general acute care hospital are covered, subject to utilization controls, when the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery; or

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(q) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520) of this part.

(r) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis

treatment for children 17 years of age and under, are covered.

(s) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

This subdivision shall be in effect only to the extent federal financial participation is available as set forth in Section 14106.6.

(t) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to such persons. These services may be provided to patients placed in facilities such as skilled nursing or intermediate care facilities, or to persons in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary. As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities.

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home and community-based services waiver.

(u) Home and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for such services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waivers.

The department shall submit a report, as provided in Section 28 of the 1982 Budget Act, 30 days prior to providing these services as Medi-Cal benefits. The report shall be submitted to the Joint Legislative Budget Committee and the fiscal committees and shall address the cost effectiveness of services provided pursuant to this subdivision.

(v) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(w) Early and periodic screening, diagnosis, and treatment for

any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(x) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(y) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(z) Home and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require an intermediate care facility or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

(aa) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code and as an in-home medical care service as outlined in subdivision (t).

SEC. 2. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational

therapy, are covered subject to utilization controls.

(c) Skilled nursing facility services, including respiratory care, podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in skilled nursing facilities are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal Drug Formulary and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in an intermediate care facility or a skilled nursing facility.

(g) Blood and blood derivatives are covered.

(h) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's crippled children services program.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Intermediate care facility services, including physician services, nurse practitioner services pursuant to Section 14115.6, and prescribed drugs as described in subdivision (d) are covered, subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy and audiology services for patients in intermediate care facilities are covered subject to utilization controls.

(o) Family planning services are covered, subject to utilization controls.

(p) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitative services, in a general acute care hospital are covered, subject to utilization controls, when either of the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery.

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible

(q) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(r) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis treatment for children 17 years of age and under, are covered.

(s) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that

article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

This subdivision shall be in effect only to the extent federal financial participation is available as set forth in Section 14106.6.

(t) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to these persons. These services may be provided to patients placed in facilities such as skilled nursing or intermediate care facilities, or to persons in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary. As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities.

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to, support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home and community-based services waiver.

(u) Home and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waivers, except to the extent provided in this subdivision.

The department shall provide home- and community-based services under all home- and community-based waiver programs to otherwise eligible individuals who, in the absence of those services, would be institutionalized, whether or not those individuals will be discharged directly from an institution into the home- and community-based waiver program.

The department shall submit a report, as provided in Section 28 of the 1982 Budget Act, 30 days prior to providing these services as Medi-Cal benefits. The report shall be submitted to the Joint Legislative Budget Committee and the fiscal committees and shall address the cost effectiveness of services provided pursuant to this subdivision.

(v) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(w) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(x) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(y) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(z) Home- and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require an intermediate care facility or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

(aa) Respiratory care, when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code, and as an in-home medical care service as outlined in subdivision (t).

SEC. 3. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to,

physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Nursing facility services, including podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory Care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in skilled nursing facilities are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal Drug Formulary and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in a nursing facility.

(g) Blood and blood derivatives are covered.

(h) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's crippled children services program.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitation services, in a general acute care hospital are covered, subject to utilization controls, when the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery; or

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(q) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis treatment for children 17 years of age and under, are covered.

(r) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

This subdivision shall be in effect only to the extent federal financial participation is available as set forth in Section 14106.6.

(s) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an

acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to those persons. These services may be provided to patients placed in nursing facilities, or to persons in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary. As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

Beneficiaries receiving in-home medical care services are entitled

to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home- and community-based services waiver.

(t) Home- and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waivers.

The department shall submit a report, as provided in Section 28 of the 1982 Budget Act, 30 days prior to providing these services as Medi-Cal benefits. The report shall be submitted to the Joint Legislative Budget Committee and the fiscal committees and shall address the cost effectiveness of services provided pursuant to this subdivision.

(u) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement the provisions of this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396 of Chapter 7 of Title 42 of the United States Code.

(w) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(x) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(y) Home- and community-based services approved by the United States Department of Health and Human Services for

beneficiaries with a diagnosis of AIDS or ARC, who require a nursing facility or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

(z) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code, and as an in-home medical care service as outlined in subdivision (s).

SEC. 4. Section 14132 of the Welfare and Institutions Code is amended to read.

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Nursing facility services, including respiratory care, podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in skilled nursing facilities are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal Drug Formulary and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an

outpatient medical procedure, nurse anesthetists services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in a nursing facility.

(g) Blood and blood derivatives are covered.

(h) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's crippled children services program.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are

covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(n) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitative services, in a general acute care hospital are covered, subject to utilization controls, when either of the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery.

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(q) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis treatment for children 17 years of age and under, are covered.

(r) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

This subdivision shall be in effect only to the extent federal financial participation is available as set forth in Section 14106 6.

(s) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to those persons. These services may be provided to patients placed in nursing facilities, or to persons in shared or congregate living arrangements, if a home setting is not medically appropriate or available to the beneficiary. As used in this section, "in-home medical care service" includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities.

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to, support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision, which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home and community-based services waiver.

(t) Home- and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for

those services shall be limited by the terms, conditions, and duration of the federal waivers, except to the extent provided in this subdivision.

The department shall provide home- and community-based services under all home- and community-based waiver programs to otherwise eligible individuals who, in the absence of those services, would be institutionalized, whether or not those individuals will be discharged directly from an institution into the home- and community-based waiver program.

The department shall submit a report, as provided in Section 28 of the 1982 Budget Act, 30 days prior to providing these services as Medi-Cal benefits. The report shall be submitted to the Joint Legislative Budget Committee and the fiscal committees and shall address the cost effectiveness of services provided pursuant to this subdivision.

(u) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396 of Chapter 7 of Title 42 of the United States Code.

(w) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(x) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(y) Home- and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require a nursing facility or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is

available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code

(z) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code, and as an in-home medical care service as outlined in subdivision (s).

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 14132 of the Welfare and Institutions Code proposed by both this bill and AB 1726. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 14132 of the Welfare and Institutions Code, (3) SB 1414 is not enacted or as enacted, does not amend that section, and (4) this bill is enacted after AB 1726, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 14132 of the Welfare and Institutions Code proposed by both this bill and SB 1414. It shall only become operative if (1) both bills are enacted and become effective January 1, 1990, (2) each bill amends Section 14132 of the Welfare and Institutions Code, (3) AB 1726 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1414, in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 14132 of the Welfare and Institutions Code proposed by this bill, AB 1726, and SB 1414. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1990, (2) all three bills amend Section 14132 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1726 and SB 1414, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 1434

An act to add and repeal Section 18717.1 of the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 18717.1 is added to the Government Code, to read:

18717 1. The board shall conduct a study of the extent to which plant quarantine inspectors in the Department of Food and Agriculture and the State Department of Health Services meet all or part of the criteria established pursuant to Section 18717 for the state safety membership category. The board shall submit its report to the Legislature and the Department of Personnel Administration or or before December 31, 1990.

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. 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 administrative mechanisms for determining the qualification of plant quarantine inspectors for the state safety membership category of the Public Employees' Retirement System may be effectuated at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1435

An act to add Sections 21100.1, 21101.1, and 21102.1 to the Government Code, relating to the Public Employees' Retirement System, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 21100.1 is added to the Government Code, to read:

21100.1. Subject to Sections 21101.1 and 21102.1, notwithstanding

any other provision of law to the contrary, a person who has been retired under this system for industrial disability shall be reinstated from retirement pursuant to this article, upon his or her application to the board, if, upon reinstatement, he or she will be employed by the state or any contracting agency as a state or local miscellaneous member.

SEC. 2. Section 21101.1 is added to the Government Code, to read:

21101.1. The board may reinstate a person from industrial disability retirement to a miscellaneous member position upon all of the following:

(a) His or her application to the board for reinstatement.

(b) The determination of the board, based upon medical examination, that he or she is not incapacitated for the duties to be assigned to him or her.

(c) The determination of the board that the employer from whose employment the person was retired for industrial disability has been furnished a notice of intent to reinstate that person, which contains information that he or she may be entitled to resume an industrial disability retirement allowance using the salaries earnable under the miscellaneous member position upon termination of the miscellaneous member employment.

SEC. 3. Section 21102.1 is added to the Government Code, to read:

21102.1 When any person is reinstated from industrial disability retirement under this article, his or her retirement allowance shall be canceled immediately, and he or she shall become a member of this system as of the date of reinstatement. His or her individual account shall be credited with an amount which is the actuarial equivalent of his or her annuity at the date of reinstatement, not to exceed the amount of his or her accumulated contributions as it was at the date of retirement. Upon subsequent retirement, the board shall resume the payment of his or her previous industrial disability retirement allowance using the highest compensation earnable during any period of membership, notwithstanding Section 20024.001, to recalculate the industrial disability retirement allowance. The member shall receive, in addition to the disability retirement allowance from the employment in which he or she was granted the industrial disability retirement, an annuity purchased with his or her accumulated normal contributions made in respect to other employment covered by the system. If the member is qualified for service retirement, he or she shall receive his or her service retirement allowance, in lieu of the industrial retirement allowance, if the service retirement allowance is greater.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that needed coordination of firefighting under joint

apprenticeship programs may be facilitated at the earliest possible time through the employment in training positions of experienced former firefighters who have retired for industrial disability, it is necessary that this act take effect immediately.

CHAPTER 1436

An act to amend Sections 25110, 25113, 25117, 25117.9, 25123.3, 25124, 25143, 25143.2, 25143.5, 25150, 25159.9, 25179.3, 25179.6, 25179.11, 25187, 25189.2, 25190, 25200, 25200.5, 25200.7, 25200.10, 25201, 25202, 25209.1, 25209.4, and 25245 of, to add Section 25120.2 to, and to repeal Sections 25120.1, 25122, and 25122.6 of, the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 25110 of the Health and Safety Code is amended to read:

25110. Unless expressly incorporated by reference by another statute, the definitions in this article govern only the construction of this chapter. Until terms used in this chapter are defined in either this chapter or in regulations adopted to implement this chapter, the corresponding definitions found in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.) and the regulations adopted pursuant to that act, shall apply to the terms used in this chapter.

SEC. 2. Section 25113 of the Health and Safety Code is amended to read:

25113. (a) "Disposal" means either of the following:

(1) The discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste so that the waste or any constituent of the waste is or may be emitted into the air or discharged into or on any land or waters, including groundwaters, or may otherwise enter the environment.

(2) The abandonment of any waste.

(b) The amendment of the section made at the 1989–90 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

SEC. 3. Section 25117 of the Health and Safety Code is amended to read:

25117. (a) "Hazardous waste" means either of the following:

(1) A waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may either.

(A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(B) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(2) A waste which meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141.

(b) "Hazardous waste" includes, but is not limited to, RCRA hazardous waste.

(c) Unless expressly provided otherwise, the term "hazardous waste" shall be understood to also include extremely hazardous waste and acutely hazardous waste.

SEC. 4. Section 25117.9 of the Health and Safety Code is amended to read:

25117.9. "Non-RCRA hazardous waste" means all hazardous waste regulated in the state, other than RCRA hazardous waste, as defined in Section 25120.2. A hazardous waste regulated in the state is presumed to be RCRA hazardous waste, unless it is determined, pursuant to regulations adopted by the department, that the hazardous waste is a non-RCRA hazardous waste. Until the department adopts regulations to implement this section, a hazardous waste is presumed to be a RCRA hazardous waste, unless the generator of the waste determines the hazardous waste is not regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6921 et seq.), pursuant to the process specified in Section 262.11 of Title 40 of the Code of Federal Regulations.

SEC. 5. Section 25120.2 is added to the Health and Safety Code, to read:

25120.2. "RCRA hazardous waste" means all waste identified as a hazardous waste in Part 261 (commencing with Section 261.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations and appendixes thereto.

SEC. 6. Section 25120.1 of the Health and Safety Code is repealed.

SEC. 7. Section 25122 of the Health and Safety Code is repealed.

SEC. 8. Section 25122.6 of the Health and Safety Code is repealed.

SEC. 9. Section 25123.3 of the Health and Safety Code 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 held in containers or tanks for greater than 90 days at an onsite facility.

(2) The hazardous waste is held at an onsite facility in tanks 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 held in containers or tanks for any period of time at an offsite facility which is not a transfer facility.

(4) The hazardous waste is held in containers or tanks 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 one kilogram of extremely hazardous waste or acutely hazardous waste, except that, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(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) Notwithstanding paragraph (1) of subdivision (a), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point which is at or near the area where the waste is generated and which is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than tanks.

(3) The generator does not hold the hazardous waste onsite for more than one year from the initial date of accumulation, or 90 days from the date the quantity limitation specified in paragraph (1) of this subdivision is reached, whichever occurs first.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words "hazardous waste" or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with the regulations adopted by the department establishing requirements for personnel training, preparedness and prevention, and contingency plans and emergency procedures applicable to storage facilities.

(6) The generator complies with regulations adopted by the

department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(7) The generator does not otherwise meet the definition of a storage facility.

SEC. 10. Section 25123.3 of the Health and Safety Code 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 held in containers or tanks for greater than 90 days at an onsite facility.

(2) The hazardous waste is held at an onsite facility in tanks for any period of time and the quantity of the hazardous waste exceeds in any individual tank 5,000 gallons or 45,000 pounds, whichever is greater, or the aggregate amount of hazardous waste stored in tanks at the facility exceeds 50,000 gallons. 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 held in containers or tanks for any period of time at an offsite facility which is not a transfer facility.

(4) The hazardous waste is held in containers or tanks at a transfer facility for periods greater than 240 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 one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(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) Notwithstanding paragraph (1) of subdivision (a), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point which is at or near the area where the waste is generated and which is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than

tanks.

(3) The generator does not hold the hazardous waste onsite for more than one year from the initial date of accumulation, or 90 days from the date the quantity limitation specified in paragraph (1) of this subdivision is reached, whichever occurs first.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words "hazardous waste" or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste offsite or holds the waste onsite and complies with the regulations adopted by the department establishing requirements for personnel training, preparedness and prevention, and contingency plans and emergency procedures applicable to storage facilities.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(7) The generator does not otherwise meet the definition of a storage facility.

SEC. 11. Section 25124 of the Health and Safety Code is amended to read:

25124. (a) "Waste" means any discarded material that is not excluded by this chapter or by regulations adopted pursuant to this chapter.

(b) A discarded material is any material which is any of the following.

(1) Relinquished, as specified in subdivision (c).

(2) Recycled, as specified in subdivision (d).

(3) Considered inherently wastelike, as specified in the regulations adopted by the department.

(c) A material is a waste if it is relinquished by being any of the following:

(1) Disposed of.

(2) Burned or incinerated.

(3) Accumulated, stored, or treated, but not recycled, before, or in lieu of, being relinquished by being disposed of, burned, or incinerated

(d) A material is a waste if it is recycled, or accumulated, stored, or treated before recycling, except as provided in Section 25143.2.

(e) A material is a waste if it poses a threat to public health or the environment and meets either, or both, of the following conditions:

(1) It is mislabeled or not adequately labeled, unless the material is correctly labeled or adequately labeled within 10 days after the material is discovered to be mislabeled or inadequately labeled.

(2) It is packaged in deteriorated or damaged containers, unless

the material is contained in sound or undamaged containers within 96 hours after the containers are discovered to be deteriorated or damaged.

SEC. 12. Section 25143 of the Health and Safety Code is amended to read:

25143. (a) The department may grant a variance from one or more of the requirements of this chapter, or the regulations adopted pursuant to this chapter, for the management of a hazardous waste if all of the following conditions apply:

(1) The hazardous waste is solely a non-RCRA hazardous waste or the hazardous waste or its management is exempt from, or is not otherwise regulated pursuant to, the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. Sec. 6901 et seq.).

(2) The department makes one of the following findings:

(A) The hazardous waste or the hazardous waste management activity is insignificant or unimportant as a potential hazard to human health and safety, and the environment.

(B) The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety, and the environment.

(3) The variance is granted in accordance with this section.

(b) The department may grant a variance only upon receipt of a variance application containing sufficient information to enable the department to determine if all of the conditions required by subdivision (a) are satisfied.

(c) Each variance issued pursuant to this section shall be issued on a form prescribed by the department and shall include, but not be limited to, all of the following:

(1) The name of the producer of the hazardous waste or the operator of the hazardous waste management activity to whom the variance is granted.

(2) A description of the physical characteristics and chemical composition of the hazardous waste or the specifications of the hazardous waste management activity to which the variance applies.

(3) The time period during which the variance is effective.

(4) A specification of the requirements of this chapter or the regulations adopted pursuant to this chapter from which the variance is granted.

(5) A specification of the conditions, limitations, or other requirements to which the variance is subject.

(d) Variances issued pursuant to subdivision (a) are subject to review at the discretion of the department and may be revoked at any time. The department shall revoke a variance if the department finds any of the following:

(1) The conditions required by subdivision (a) are no longer satisfied.

(2) The holder of the variance is in violation of one or more of the

conditions, limitations, or other requirements of the variance, and, as a result of the violation, the conditions required by subdivision (a) are no longer satisfied.

(3) If the variance was granted because of the finding specified in subparagraph (B) of paragraph (2) of subdivision (a), the holder of the variance is in violation of one or more of the regulatory requirements of another governmental agency to which the holder is subject and the violation invalidates that finding.

SEC. 13. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to the requirements of this chapter which apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivision (e), any recyclable material is not a waste under this chapter when the material can be shown to be recycled by any of the following methods:

(1) Used or reused as an ingredient in an industrial process to make a product, if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products, if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivisions (b), (d), and (e), any recyclable material may be recycled at a facility which is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter. A waste subject to this paragraph is exempt from this chapter to the same extent the waste is exempt from subsections (q), (r), and (s) of Section 6924 of Title 42 of the United States Code.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within 90 days of its generation.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivision (e), any recyclable material which is a non-RCRA hazardous waste, as

defined in Section 25117.9, is not a waste under this chapter if the material meets any of the following requirements:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product, which has been processed from a hazardous waste, or which has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product contains no hazardous constituents, other than those for which the material is being recycled.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent which is managed by the owner or operator of a refinery which is processing primarily crude oil and which is not subject to permit requirements for recycling of used oil, or a public utility, or a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and which meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler which complies with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel.

(ii) The material is either managed at the site where it was generated or managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator.

(iii) The material contains no hazardous constituents other than those for which the material is being recycled.

(3) The material is transferred between two or more facilities operated by the same person, if the material is being transferred for purposes of recycling.

(4) The material is both transported and used or reused, as an ingredient in an industrial process to make a product, if the material is not treated before that use or reuse.

(5) The material is a container which meets all of the following requirements:

(A) The container was last used to hold a hazardous material acquired from a supplier of hazardous materials.

(B) The container is empty pursuant to the standards set forth in Section 261.7 of Title 40 of the Code of Federal Regulations.

(C) The container is returned to a supplier of hazardous materials

for the purpose of being refilled.

(D) The container is not treated prior to being returned to the supplier of hazardous materials.

(E) The container is not treated by the supplier of hazardous materials except by rinsing.

(F) The container is refilled by the supplier with hazardous material which is compatible with the hazardous material which the container previously held.

(G) The container is handled in accordance with any regulations adopted by the department to implement this paragraph.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), or even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials used in a manner constituting disposal, or used to produce products that are applied to the land including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(2) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(3) Materials accumulated speculatively.

(4) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(5) Used or spent etchants, stripping solutions, and plating solutions, which are transported to an offsite facility operated by a person other than the generator and which conform to either of the following:

(A) Meet a characteristic or a criterion of a hazardous waste established by the Environmental Protection Agency or the department.

(B) Are listed by the Environmental Protection Agency or the department as a hazardous waste.

(6) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil meets the definition of recycled oil contained in subdivision (c) of Section 25250.1.

(B) The used oil is exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d) or under paragraph (3) of subdivision (d) of this section, under subdivision (e) of Section 25250.1, or under Section 25250.3.

(C) The used oil is used or reused on the site where it was generated and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel, unless the used oil is exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) If the department brings an action to enforce this chapter, any person subject to the action who claims that a certain recyclable material is not a waste or is excluded, exempt, or conditionally exempt, from regulation under this chapter, shall demonstrate to the department that there is a known market or disposition for the material, and that the requirements of any exemption, exclusion, or conditional exemption from this chapter are met, by providing appropriate documentation to demonstrate that the material is not a waste or is excluded, exempt, or conditionally exempt, from regulation. Any person subject to an enforcement action and making this claim shall provide to the department, upon request, the name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material, and any other information related to the management of the material requested by the department. Any owner or operator of a facility subject to an action to enforce this chapter who claims to be recycling materials shall show that the facility has the necessary equipment to recycle the material.

SEC. 14. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to the requirements of this chapter which apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivision (e), any recyclable material is not a waste under this chapter when the material can be shown to be recycled by any of the following methods.

(1) Used or reused as an ingredient in an industrial process to make a product, if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products, if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivisions (b), (d), and (e), any recyclable material may be recycled at a facility which is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter. A waste subject to this paragraph is exempt from this chapter to the same extent the waste is exempt from subsections (q), (r), and (s) of Section 6924 of Title 42 of the United States Code.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within 90 days of its generation.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivision (e), any recyclable material which is a non-RCRA hazardous waste, as defined in Section 25117.9, is not a waste under this chapter if the material meets any of the following requirements:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product, which has been processed from a hazardous waste, or which has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product contains no hazardous constituents, other than those for which the material is being recycled.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil which is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent which is managed by the owner or operator of a refinery which is processing primarily crude oil and which is not subject to permit requirements for recycling of used oil, or a public utility, or a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and which meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler which complies with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel.

(ii) The material is either managed at the site where it was generated or managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate

parent of the generator.

(iii) The material contains no hazardous constituents other than those for which the material is being recycled.

(3) The material is transported between locations operated by the same person, if the material is recycled at the last location and is not handled at any interim location not operated by the person. If requested by the department or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(4) The material is transferred between locations operated by the same person, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(A) The material is transferred by employees of the person in vehicles under the control of the person or by a registered hazardous waste hauler under contract to the person.

(B) The material is not handled at any interim location not operated by the person.

(C) The material is not held at any publicly accessible interim location for more than four hours.

(D) The material is managed in compliance with the requirements of this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by the person. Upon receipt of the material at the last location operated by the person, the material shall be deemed to have been generated at that location.

(E) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph shall, within 15 days of the request, supply documentation to show that the requirements of this paragraph have been satisfied.

(5) The material is both transported and used or reused, as an ingredient in an industrial process to make a product, if the material is not treated before that use or reuse.

(6) The material is a container which meets all of the following requirements:

(A) The container was last used to hold a hazardous material acquired from a supplier of hazardous materials.

(B) The container is empty pursuant to the standards set forth in Section 261.7 of Title 40 of the Code of Federal Regulations.

(C) The container is returned to a supplier of hazardous materials for the purpose of being refilled.

(D) The container is not treated prior to being returned to the supplier of hazardous materials.

(E) The container is not treated by the supplier of hazardous materials except by rinsing.

(F) The container is refilled by the supplier with hazardous material which is compatible with the hazardous material which the container previously held.

(G) The container is handled in accordance with any regulations adopted by the department to implement this paragraph.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), or even if the recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials which are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(2) Materials which are a non-RCRA hazardous waste, as defined in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions, which are transported to an offsite facility operated by a person other than the generator and which conform to either of the following:

(A) Meet a characteristic or a criterion of a hazardous waste established by the Environmental Protection Agency or the department.

(B) Are listed by the Environmental Protection Agency or the department as a hazardous waste.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil meets the definition of recycled oil contained in subdivision (c) of Section 25250.1.

(B) The used oil is exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d) or under paragraph (3) of subdivision (d) of this section, under subdivision (e) of Section 25250.1, or under Section 25250.3.

(C) The used oil is used or reused on the site where it was generated and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel, unless

the used oil is exempted under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) If the department brings an action to enforce this chapter, any person subject to the action who claims that a certain recyclable material is not a waste or is excluded, exempt, or conditionally exempt, from regulation under this chapter, shall demonstrate to the department that there is a known market or disposition for the material, and that the requirements of any exemption, exclusion, or conditional exemption from this chapter are met, by providing appropriate documentation to demonstrate that the material is not a waste or is excluded, exempt, or conditionally exempt, from regulation. Any person subject to an enforcement action and making this claim shall provide to the department, upon request, the name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material, and any other information related to the management of the material requested by the department. Any owner or operator of a facility subject to an action to enforce this chapter who claims to be recycling materials shall show that the facility has the necessary equipment to recycle the material.

SEC. 15. Section 25143.5 of the Health and Safety Code is amended to read:

25143.5. (a) Except as provided in subdivisions (d) and (e), the department shall classify as nonhazardous waste any fly ash, bottom ash, and flue gas emission control residues, generated from the combustion of solid waste or biomass material, if these wastes do not contain significant quantities of industrial sludge or hazardous waste, and if the combustion of the solid waste or biomass material will be adequately monitored and controlled so as to prevent the handling or the disposal of any waste in a manner prohibited by law, unless the department determines that the ash or residue is hazardous, by testing a representative sample of the ash or residue pursuant to criteria adopted by the department. If the department determines that the ash or residue is nonhazardous, the department shall not repeal or modify that determination unless the department subsequently determines that, since the original testing, there has been a significant change in the fly ash, bottom ash, or flue gas emissions control residues, based upon data obtained from a representative sample of the ash or residue.

(b) The fly ash, bottom ash, and flue gas emission control residues which are classified as nonhazardous by the department are exempt from this chapter.

(c) An operator of a solid waste facility which converts solid waste into energy shall notify the department whenever there has been a significant change in the waste entering the combustion process, the combustion process itself, or in the management of the ash or

residues generated by the facility.

(d) The classifications of fly ash, bottom ash, and flue gas emission control residues as nonhazardous, made by the department before January 1, 1985, for the ash or residue generated by an individual solid waste facility which will convert solid waste into energy shall not be modified or repealed by the department unless the department determines all of the following:

(1) New data reveals that there has been a significant change in the solid waste entering the combustion process, in the combustion process itself, or in the management of the ash or residue.

(2) The change specified in paragraph (1) causes the facility to produce waste which is hazardous waste, as defined in Section 25117, as determined by the testing of a representative sample of the ash or residue pursuant to criteria adopted by the department.

(3) The hazard caused by the change specified in paragraph (1) or the hazardous waste produced by the facility is not adequately regulated by any other state or local agency with jurisdiction over the facility which generates the ash or residue.

This subdivision applies to determinations made by the department for individual solid waste conversion facilities, including, but not limited to, those projects which will be constructed or will serve the Counties of San Diego, Humboldt, San Joaquin, Butte, Trinity, Sacramento, and Alameda, and the Cities of San Francisco, Long Beach, Fresno, Modesto, Sanger, and Commerce.

(e) Notwithstanding any other provision of law, this section applies only to fly ash, bottom ash, and flue gas emission control residues which are not RCRA hazardous waste.

SEC. 16. Section 25150 of the Health and Safety Code is amended to read:

25150. (a) The department shall adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to the public health, to domestic livestock, to wildlife, or to the environment.

(b) The department shall apply the standards and regulations adopted pursuant to subdivision (a) to the use and operation of hazardous waste management facilities and may adopt, and revise when appropriate, additional standards and regulations for the use and operation of these facilities to protect against hazards to public health, domestic livestock, wildlife, or the environment posed by these facilities.

(c) Except as provided in subdivision (d), the department may limit the application of the standards and regulations adopted or revised pursuant to subdivision (a) at facilities operating pursuant to a hazardous waste facilities permit in any manner which the department determines to be appropriate, including, but not limited to, requiring these facilities to apply for, and receive, a permit modification prior to the application of the standards and regulations.

(d) The department shall not adopt or revise standards and

regulations which result in the imposition of any requirements for the management of a RCRA waste which is less stringent than a corresponding requirement 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.).

(e) The department shall adopt, and revise when appropriate, regulations for the recycling of hazardous waste to protect against hazards to the public health, domestic livestock, wildlife, or to the environment and to encourage the best use of natural resources.

(f) Before the adoption of regulations, the department shall consult with all agencies of interested local governments, including, but not limited to, local governing bodies, local planning agencies, local health authorities, and local building inspection departments, and secure technical assistance from the Department of Food and Agriculture, the Department of the California Highway Patrol, the Department of Fish and Game, the Department of Industrial Relations, the Division of Industrial Safety, the State Air Resources Board, the State Water Resources Control Board, the State Fire Marshal, regional water quality control boards, the State Building Standards Commission, and the California Waste Management Board.

SEC. 17. Section 25159 9 of the Health and Safety Code is amended to read:

25159.9. Notwithstanding any other provision of law, the department may make available to the federal Environmental Protection Agency or any other federal agency any and all information necessary to be furnished to these agencies in order to comply with the Resource Conservation and Recovery Act of 1976, Public Law 94-580, as amended (42 U.S.C. Sec. 6901 et seq.) in order to obtain and maintain authorization to administer the state hazardous waste program in lieu of the federal program. The sharing of information between the department and a federal agency pursuant to this section shall not constitute a waiver by the department or any affected person of any privilege or confidentiality of the information provided by law.

SEC. 18. Section 25179.3 of the Health and Safety Code is amended to read:

25179.3. For the purposes of this article, the following definitions apply:

(a) "Agricultural drainage water" means subsurface water or perched groundwater which is drained from beneath agricultural lands and which results from agricultural irrigation.

(b) "Board" means the State Water Resources Control Board.

(c) "Free liquids" mean liquids which readily separate from the solid portion of a hazardous waste under ambient temperature and pressure.

(d) "Hazardous constituent" has the meaning specified in the regulations adopted by the department.

(e) "Hazardous waste facility" has the same meaning as defined

in Section 25117.1.

(f) "Hazardous waste facilities permit" means a permit issued by the department pursuant to Section 25200.

(g) "Hazardous waste landfill" means a disposal facility, or part of a facility, where hazardous waste is placed in or onto land and which is not a land treatment facility, a surface impoundment, or an injection well.

(h) "Land disposal" means placement in or on the land, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or concrete vault or bunker intended for disposal purposes.

(i) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(j) Notwithstanding Section 25123.5, and for the purposes of this article only, "treatment" means any method, technique, or process, including incineration, occurring at authorized facilities which changes the physical, chemical, or biological character or composition of any hazardous waste and, by that change, the waste becomes nonhazardous, significantly less hazardous, or more suitable for land disposal because of removal or substantial reduction of undesirable properties, such as toxicity, mobility, persistence, reactivity, bioaccumulation, flammability, or corrosivity. "Treatment" does not include any of the following, to the extent that one or more of the following are the only methods which are used:

(1) Solidification of hazardous waste by the addition of absorbent material which produces a change only in the physical character of the waste without a corresponding change in the chemical character of the waste.

(2) Treatment occurring directly in or on the land, such as land treatment, except that treatment may include in situ treatment necessary for site mitigation.

(3) Dilution of hazardous waste by the addition of nonhazardous material.

(4) Evaporation in a surface impoundment.

(k) "Small containers of hazardous waste in lab packs" means a container meeting the requirements of Section 66910 of Title 22 of the California Code of Regulations.

(*l*) "Treated hazardous waste" means a hazardous waste which has been subject to treatment, as specified in subdivision (j), which meets treatment standards established by the department pursuant to Section 25179.6, and any applicable treatment standards adopted by the Environmental Protection Agency pursuant to Section 3004m of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924(m)).

"Treated hazardous waste" also includes a hazardous waste which meets all applicable treatment standards without prior treatment. If a treatment standard has not been established for a hazardous waste

that has not been restricted or prohibited by the Environmental Protection Agency pursuant to Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924), the hazardous waste shall be considered a treated hazardous waste if the waste complies with one of the following:

(1) The waste complies with the criteria and requirements established for special wastes in the regulations adopted by the department and has been classified as a special waste in the regulations adopted by the department.

(2) The waste does not contain any persistent or bioaccumulative toxic substances in excess of the soluble threshold limit concentration for the substance, as established in regulations adopted by the department

SEC. 19. Section 25179 6 of the Health and Safety Code is amended to read:

25179.6. (a) (1) Notwithstanding any other provision of law, any hazardous waste prohibited from land disposal by the federal act, or by the Environmental Protection Agency pursuant to the federal act, is prohibited from land disposal in the state, unless the hazardous waste, or the producer of the hazardous waste is granted a variance, extension, exclusion, or exemption by the Administrator of the Environmental Protection Agency or the waste is treated in accordance with an applicable treatment standard.

(2) Except as provided in Sections 25179.7, 25179.8, 25179.9, 25179.10, 25179.11, and 25179.12, on or before May 8, 1990, the department shall prohibit the land disposal of any hazardous waste after the effective date of the department's action, unless the waste meets one of the following conditions:

(A) It is a treated hazardous waste.

(B) It is a solid hazardous waste generated in the cleanup or decontamination of any site contaminated only by hazardous waste which has not been restricted or prohibited by Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924) or prohibited by the Environmental Protection Agency pursuant to that section, and which does not meet the treatment standards established by the department pursuant to this section, if the disposal of the waste has been approved by the department or other agency authorized to approve the cleanup or decontamination after considering those factors specified in subdivision (c) of Section 25356.1, regardless of whether a remedial action plan has been, or will be, prepared for the cleanup or decontamination.

(b) Notwithstanding subdivision (d), any treatment standard adopted or amended by the Environmental Protection Agency pursuant to subsection (m) of Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924(m)), for a hazardous waste prohibited from land disposal pursuant to paragraph (1) of subdivision (a) is the minimum treatment standard required to be met before the hazardous waste

may be disposed of, using land disposal, in the state. Any such treatment standard adopted or amended by the Environmental Protection Agency shall become effective in the state upon the effective date of that adoption or amendment, as specified in the final rule published in the Federal Register. The department shall not grant an extension, variance, or exemption from the treatment standard, unless the Administrator of the Environmental Protection Agency grants an equivalent or less stringent extension, variance, or exemption.

(1) As closely as possible with, but not later than six months following the dates specified in, the schedules required by subsection (g) of Section 6924 of Title 42 of the United States Code, the department shall adopt, on or before May 8, 1990, treatment standards specifying a method or methods of treatment, and the associated performance level, or the level of treatment required prior to the land disposal of each hazardous waste which meets the criteria adopted by the department pursuant to Section 25141.

(2) If the department specifies a method or methods of treatment and an associated performance level, unless the hazardous waste is subject to subdivision (a) of Section 25155.5, any person may use an alternative treatment method if the person demonstrates both of the following to the satisfaction of the department:

(A) The alternative treatment method will result in a level of performance substantially equivalent or greater than that achievable using the method or methods specified by the department.

(B) If the hazardous waste is subject to treatment standards in the form of a treatment method or specified technology established by the Environmental Protection Agency pursuant to Subsection (m) of Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6924(m)), the Administrator of the Environmental Protection Agency has approved the use of the alternative treatment method.

(3) The treatment standards adopted pursuant to paragraph (1) shall be designed to minimize the hazardous characteristics of the waste and minimize the potential for bioaccumulation or migration of hazardous constituents from the waste into the air, land, and water resources of the state. In adopting these standards, the department shall consider applicable federal standards adopted by the Environmental Protection Agency to the extent that the federal treatment standards minimize the hazardous characteristics of the waste and the potential for bioaccumulation or migration of hazardous constituents. The department shall adopt treatment standards for any hazardous waste for which a federal treatment standard does not minimize the hazardous characteristics of the waste and the potential for bioaccumulation or migration of hazardous constituents.

(4) For the purposes of this subdivision, the following apply:

(A) "Minimization of hazardous characteristics and the potential for bioaccumulation or migration" means that level of treatment

which is achievable using the best demonstrated available technology.

(B) "Best demonstrated available technology" means a method of treatment which is available, or can be made available in a reasonable time, on a commercial scale and the performance of which has been demonstrated through reliable test data and project development sufficient in scope to ensure consistent results and standardized applicability.

(c) Regulations establishing treatment standards adopted by the department pursuant to this section shall be deemed a necessity for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and the Office of Administrative Law shall not disapprove the regulations on the grounds that they do not meet the requirements of paragraph (1) of subdivision (a) of Section 11349.1 of the Government Code.

(d) At least every seven years from the date of adoption of regulations pursuant to subdivision (b), the department shall review each treatment standard and shall revise the treatment standard if the revised treatment standard will provide substantial additional protection to human health and the environment and the department finds that the cost of compliance to those industries which are required to replace or retrofit existing hazardous waste treatment units or processes is necessary to protect human health and the environment.

A revised treatment standard adopted pursuant to this subdivision shall be applicable to any hazardous waste treatment unit or process constructed after the revised treatment standard is adopted. The land disposal of hazardous waste treated in an existing treatment unit or process which does not provide a level of performance equivalent to the revised treatment standard shall not be prohibited by the department until two years following the adoption of the revised treatment standard, by which time the existing treatment unit or process shall be replaced or retrofitted to provide a level of performance equivalent to the revised treatment standard. The department may, on a case by case basis, extend the date by which an existing treatment unit or process shall be replaced or retrofitted, but not more than 10 additional years, if an extension is needed to avoid significant economic disruption to a specific firm or hazardous waste treatment facility.

SEC. 20. Section 25179.11 of the Health and Safety Code is amended to read:

25179.11. (a) A person discharging a hazardous waste into a surface impoundment which was constructed before July 1, 1986, and for which an application for waste discharge requirements was submitted on or before September 1, 1986, is exempt from the requirements of Section 25179.6 if all of the following conditions apply to the surface impoundment:

(1) The surface impoundment, the management of the hazardous waste discharged into the surface impoundment, and any residue

resulting from the treatment of the hazardous waste, meet the requirements of Section 3005(j) of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6925 (j)) and Section 268.4 of Title 40 of the Code of Federal Regulations, if applicable.

(2) The surface impoundment is in compliance with Article 9.5 (commencing with Section 25208).

(3) Hazardous waste is discharged into the impoundment for the purposes of treating the waste to comply with the treatment standard adopted by the department pursuant to subdivision (b) of Section 25179.6 for that hazardous waste, and the residues which result from the treatment of that hazardous waste which do not meet that treatment standard are removed for subsequent management within one year of the date of placement of the hazardous waste into the surface impoundment.

(b) A person discharging hazardous waste into a surface impoundment which was constructed after July 1, 1986, and for which an application for waste discharge requirements is submitted after September 1, 1986, is exempt from the requirements of Section 25179.6 if all of the following conditions apply to the surface impoundment:

(1) The surface impoundment and the hazardous waste discharged into the surface impoundment, and any residue resulting from the treatment of the hazardous waste, meet the requirements of Section 3005(j) of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S C. Sec. 6925 (j)) and Section 268.4 of Title 40 of the Code of Federal Regulations, if applicable.

(2) The surface impoundment is in compliance with Article 9.5 (commencing with Section 25208).

(3) Hazardous waste is discharged into the surface impoundment for the purposes of treating the waste to comply with the treatment standard adopted by the department pursuant to subdivision (b) of Section 25179.6 for that hazardous waste, and the residues which result from the treatment of that hazardous waste which do not meet that treatment standard are removed for subsequent management within one year of the date of placement of the hazardous waste into the surface impoundment.

(4) The department determines that the use of the surface impoundment to treat the hazardous waste is the only means by which the hazardous waste can be treated using the best demonstrated available technology.

SEC. 21. Section 25187 of the Health and Safety Code is amended to read:

25187. (a) Whenever the department determines that any person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code to violate, this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or any permit, rule, regulation, standard, or requirement issued or

adopted pursuant to this chapter, Chapter 6.8 (commencing with Section 25300), or Article 3 (commencing with Section 25810) of Chapter 7.6, of this division, or the department determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility, the department may issue an order specifying a schedule for compliance or correction. An order issued pursuant to this section shall include a requirement that the person take corrective action with respect to hazardous waste, including the cleanup of the hazardous waste, abatement of the effects thereof, and any other necessary remedial action. An order issued pursuant to this section which requires corrective action at a hazardous waste facility shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment. The order shall incorporate as a condition of the order any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The department may also include any more stringent requirement which the department determines is necessary or appropriate to protect water quality. Persons who are subject to an order pursuant to this section include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(b) For purposes of subdivision (a), "hazardous waste facility" includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to subdivision (a) shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing.

(d) Any person served with an order pursuant to subdivision (c) who has been unable to resolve any violation or deficiency on an informal basis with the department may, within 10 days after service of the order, request a hearing by filing with the department a notice of defense. A notice of defense shall be deemed filed within the 10-day period provided by this subdivision if it is postmarked within that 10-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Any hearing requested under subdivision (d) shall be conducted by an independent hearing officer, in accordance with the procedures specified in Sections 11507 to 11517, inclusive, of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation and the various abatement and cleanup remedies which are appropriate in the given circumstances and which are consistent with the primary emphasis of protecting the public health and safety and the environment. After conducting any hearing requested under subdivision (d), the hearing officer shall, within 30 days after the case is submitted, issue a decision, including any order, if appropriate. The hearing officer's decision, including any order issued therewith, shall be served by the department on each party by personal service or by certified mail.

(f) Any provision of an order issued under subdivision (a) shall take effect upon issuance by the department if the department finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a decision by the hearing officer under subdivision (e). However, in the event that the department determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole shall take effect upon issuance by the department and a request for a hearing shall not stay the effect of the order as a whole pending a decision by the hearing officer under subdivision (e). Any order issued after a hearing requested under subdivision (d) shall take effect upon issuance by the hearing officer.

(g) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise specified in this section, Section 1094.5 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

SEC. 22. Section 25189.2 of the Health and Safety Code is amended to read:

25189.2. (a) Any person who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document, filed, maintained, or used for purposes of compliance with this chapter, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each separate violation or, for continuing violations, for each day that the violation continues.

(b) Except as provided in subdivision (c), any person who violates any provision of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues.

(c) Any person who disposes, or causes the disposal of, any hazardous or extremely hazardous waste at a point which is not authorized according to the provisions of this chapter is liable for a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation and may be ordered to disclose the fact of this violation or these violations to those persons as the court or, in the case of an administrative action, a hearing officer, may direct. Each day on which the deposit remains is a separate additional violation, unless the person immediately files a report of the deposit with the department and is complying with any order concerning the deposit issued by the department, a hearing officer, or a court of competent jurisdiction for the cleanup.

(d) No person may be liable for a civil penalty imposed under this section and for a civil penalty imposed under Section 25189 for the same act or failure to act.

(e) Liability under this section may be imposed in a civil action or liability may be imposed administratively pursuant to Section 25189.3.

SEC. 23. Section 25190 of the Health and Safety Code is amended to read:

25190. Except as otherwise provided in Sections 25189.5, 25189.6, 25189 7, and 25191, any person who violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is, upon conviction, guilty of a misdemeanor.

If the conviction is for a second or subsequent violation, the person shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for 16, 20, or 24 months. The court shall also impose upon the person a fine of not less than five thousand dollars ($5,000) or more than twenty-five thousand dollars ($25,000).

SEC. 24. Section 25200 of the Health and Safety Code is amended to read:

25200. (a) The department shall issue hazardous waste facilities permits to use and operate one or more hazardous waste management units at a facility which in the judgment of the

department meet the building standards published in the State Building Standards Code relating to hazardous waste facilities and the other standards and requirements adopted pursuant to this chapter. The department shall impose conditions on each hazardous waste facilities permit specifying the types of hazardous wastes which may be accepted for transfer, storage, treatment, or disposal. The department may impose any other conditions on a hazardous waste facilities permit that are consistent with the intent of this chapter.

(b) The department may impose, as a condition of a hazardous waste facilities permit, a requirement that the owner or operator of a hazardous waste facility which receives hazardous waste from more than one producer comply with any order of the director which prohibits the facility operator from refusing to accept a hazardous waste based on geographical origin which is authorized to be accepted and may be accepted by the facility without extraordinary hazard.

(c) Any hazardous waste facilities permit issued by the department shall be for a fixed term, which shall not exceed 10 years for any land disposal facility, storage facility, incinerator, or other treatment facility. The department shall review each hazardous waste facilities permit for a land disposal facility five years after the date of issuance or reissuance, and shall modify the permit, as necessary, to assure that the facility continues to comply with the currently applicable requirements of this chapter and the regulations adopted pursuant to this chapter. This subdivision does not prohibit the department from reviewing and modifying a permit at any time during its term. When reviewing any application for a permit renewal, the department shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain the terms and conditions which the department determines necessary to protect human health and the environment.

(d) On the date the department is granted final authorization by the Environmental Protection Agency pursuant to Section 6926 of Title 42 of the United States Code, any permit issued pursuant to the federal act by the Environmental Protection Agency in the state for which no state hazardous waste facilities permit has been issued shall be deemed to be a state permit enforceable by the department until a state permit is issued. In addition to complying with the terms and conditions specified in a federal permit deemed to be a state permit pursuant to this section, an owner or operator who holds that permit shall comply with the requirements of this chapter and the regulations adopted by the department to implement this chapter.

SEC. 25. 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 the use or operation of a hazardous waste facility which was in existence on November 19, 1980, or which was

in existence on the effective date of any statute or regulation which subjected that facility to hazardous waste facilities permit requirements under this chapter, 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 and complied with the requirements of subsection (a) of Section 6930 of Title 42 of the United States Code.

(b) The person operating under an interim status pursuant to this section shall not do any of the following acts:

(1) Treat, store, transfer, 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 facility has been subject to any of the following actions:

(1) Denial of a hazardous waste facilities permit.

(2) Suspension, revocation, or termination of a hazardous waste facilities permit.

(3) Termination of a grant of interim status.

(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 Code of Regulations, as that section read on January 1, 1988.

(f) Any land disposal facility, as defined in subdivision (h) of Section 25179 3, which lost interim status pursuant to paragraph (2) or (3) of subsection (e) of Section 6925 of Title 42 of the United States Code is deemed to have lost interim status granted under this section to operate a facility managing hazardous waste regulated pursuant to the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.).

(g) The termination date for interim status for any land disposal facility, as defined in subdivision (h) of Section 25179 3, which is in existence on the effective date of any statute or the regulation adopted pursuant to that statute which subjects the facility to hazardous waste facilities permit requirements under this chapter, and which is granted interim status under this section, is the date 12 months after the date on which the facility first becomes subject to

the hazardous waste facilities permit requirements, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be disposed of at the facility.

(2) The owner or operator of the facility does both of the following:

(A) Applies for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility before the date 12 months after the date on which the facility first becomes subject to the hazardous waste facilities permit requirements.

(B) Certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(h) The termination date for interim status for any incinerator facility which submitted an application for a hazardous waste facilities permit before November 8, 1984, is November 8, 1989, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be incinerated at the facility.

(2) The owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility on or before November 8, 1986.

(i) The termination date for interim status for any facility, other than a facility specified in subdivision (g) or (h), which submitted an application for a hazardous waste facilities permit before November 8, 1984, is November 8, 1992, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non-RCRA hazardous waste will be transferred, treated, or stored at the facility.

(2) The owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit under Section 25200 for the facility on or before November 8, 1988.

SEC. 26. Section 25200.7 of the Health and Safety Code is amended 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.).

(c) On or before November 8, 1989, the department shall take

final action on each application for a hazardous waste facilities permit to operate an incinerator facility which was submitted before November 8, 1984, by either issuing a final permit pursuant to the application or a final denial of the application.

(d) On or before November 8, 1992, the department shall take final permit action on each application for a hazardous waste facilities permit to operate any facility not otherwise subject to subdivision (a) or (c) which was submitted before November 8, 1984. The department shall issue a final hazardous waste facilities permit pursuant to the application or issue a final denial of the application.

(e) Interim status granted pursuant to Section 25200.5 to any facility subject to subdivision (c) shall terminate on November 8, 1989, unless the owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit by November 8, 1986.

(f) Interim status granted pursuant to Section 25200.5 to any facility subject to subdivision (d) shall terminate on November 8, 1992, unless the owner or operator of the facility applied for a final determination regarding the issuance of a hazardous waste facilities permit by November 8, 1988.

(g) Subdivisions (c), (d), (e) and (f) do not apply to applications for hazardous waste facilities permits to transfer, treat, store, or dispose of non-RCRA hazardous wastes.

SEC. 27. Section 25200.10 of the Health and Safety Code is amended to read:

25200.10. (a) The department shall require, and any permit issued by the department shall require, corrective action for all releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at a facility engaged in hazardous waste management, regardless of the time at which waste was released at the facility. Any corrective action required pursuant to this section shall require that corrective action be taken beyond the facility boundary where necessary to protect human health or the environment, unless the owner or operator demonstrates to the satisfaction of the department that despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake this action. When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.

(b) This section does not limit the department's authority to require corrective action pursuant to Section 25187.

(c) For purposes of this section, "facility" means the entire site that is under the control of the owner or operator seeking a hazardous waste facilities permit.

SEC. 28. Section 25201 of the Health and Safety Code is amended to read:

25201. (a) No owner or operator of a storage facility, treatment

facility, waste transfer station, resource recovery facility, or waste disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, station, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other grant of authorization from the department to use and operate the facility, station, area, or site.

(b) Except as necessary to comply with Section 25159.18, any person planning to construct a new hazardous waste facility or a new hazardous waste management unit, which would manage RCRA hazardous waste, shall obtain a hazardous waste facilities permit or a permit amendment from the department prior to commencing construction.

SEC. 29. Section 25202 of the Health and Safety Code is amended to read:

25202. (a) The owner or operator of a hazardous waste facility who holds a hazardous waste facilities permit shall comply with the conditions of the hazardous waste facilities permit, the requirements of this chapter, and with the regulations adopted by the department pursuant to this chapter, including regulations which become effective after the issuance of the permit.

Notwithstanding any term or condition in a hazardous waste facilities permit, the department may adopt or amend regulations which impose additional or more stringent requirements than those existing at the time the permit was issued. The department may enforce both the permit and additional or more stringent requirements against the owner or operator of a facility.

(b) The amendment of this section made at the 1989 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the existing law.

SEC. 30. Section 25209.1 of the Health and Safety Code is amended to read:

25209.1. For purposes of this article, the following definitions apply:

(a) "Discharge" means to place or dispose hazardous wastes in a land treatment unit.

(b) "Facility" has the meaning specified in Section 25117.1.

(c) "Hazardous constituent" has the meaning specified in regulations adopted by the department.

(d) "Hazardous waste" means a hazardous waste, as defined in Section 25117 and "non-RCRA hazardous waste" has the same meaning as defined in Section 25117.9.

(e) "Land treatment unit" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface so that hazardous constituents are degraded, transformed, or immobilized within the treatment zone. A land treatment unit is a disposal unit if the waste will remain after closure.

(f) "Pollution" has the meaning specified in Section 13050 of the Water Code.

(g) "Potential source of drinking water" has the meaning

specified in subdivision (s) of Section 25208.2.

(h) "Treatment zone" means the portion of a land treatment unit including the soil surface, within which hazardous constituents are degraded, transformed, or immobilized. A treatment zone may not extend more than five feet from the initial soil surface and the base of the treatment zone shall be a minimum of five feet above the highest anticipated elevation of the water table.

(i) "Vadose zone" means the unsaturated zone outside the treatment zone and between the land surface and the water table.

(j) "Waste management unit" has the meaning specified in the regulations adopted by the department.

SEC. 31. Section 25209.4 of the Health and Safety Code is amended to read:

25209.4. (a) Except as provided in Section 25209.6, no person shall place or dispose of hazardous waste in a land treatment unit if any of the following conditions exist:

(1) Hazardous constituents have migrated from the land treatment unit into the vadose zone beneath or surrounding the treatment zone or into the waters beneath or surrounding the treatment zone.

(2) There is evidence that a hazardous constituent in the waste discharged to the land treatment unit has not been or will not be completely degraded, transformed, or immobilized in the treatment zone.

(3) There is a significant potential for hazardous constituents to migrate from the land treatment unit into a potential source of drinking water

(b) The owner or operator of a land treatment unit shall do all of the following:

(1) Periodically, at the request of the department, and at least annually, submit information the department may require in order to evaluate whether the conditions set forth in paragraph (1) or (2) of subdivision (a) are not present. The information to be submitted to the department shall include, but is not limited to, a sufficient number of soil core samples in, beneath, and surrounding the treatment zone of the land treatment unit to detect any hazardous constituents which may have migrated from the treatment zone. The department may adopt regulations requiring additional or more frequent testing.

(2) Within 72 hours of detecting and confirming the existence of either of the conditions identified in paragraph (1) or (2) of subdivision (a), or the presence of factors that render the owner or operator unable to continue satisfying the variance requirements of subdivision (b) of Section 25209.2, report to the department describing the full extent of the owner's or operator's findings.

(c) Upon receiving notice pursuant to paragraph (2) of subdivision (b), or upon the independent confirmation by the department, the department shall order the owner or operator to cease operating the land treatment unit. The owner or operator shall

not resume operating the land treatment unit and shall close the land treatment unit unless one of the following actions is taken:

(1) The owner or operator completes appropriate removal or remedial actions to the satisfaction of the department and the owner or operator submits to the department, and the department approves, an application for a permit or variance modification to modify the operating practices at the facility to maximize the success of degradation, immobilization, or transformation processes in the treatment zone, if the owner or operator has not previously submitted an application for a permit or variance modification pursuant to this paragraph.

(2) The owner or operator completes appropriate removal or remedial actions and equips the land treatment unit with liners, leachate collection and removal systems, a groundwater monitoring system, and a vadose zone monitoring system that satisfy the requirements of Section 25209.5, if the land treatment unit has not already been equipped with these systems.

(d) All actions taken by an owner or operator pursuant to paragraph (1) or (2) of subdivision (c) shall be completed within a time period specified by the department, which shall not exceed 18 months after the department receives notice pursuant to subdivision (c). If the actions are not completed within this time period, the land treatment unit shall be closed, unless granted an extension by the department due to exceptional circumstances beyond the control of the owner and operator.

SEC. 32. Section 25245 of the Health and Safety Code is amended to read:

25245. (a) The department shall adopt, and revise when appropriate, standards and regulations which shall do both of the following:

(1) Specify the financial assurances to be provided by the owner or operator of a hazardous waste facility that are necessary to respond adequately to damage claims arising out of the operation of that type of facility and to provide for the cost of closure and subsequent maintenance of the facility, including, but not limited to, the monitoring of groundwater and other aspects of the environment after closure. The financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or, for facilities which manage solely non-RCRA hazardous waste, any other equivalent financial arrangement acceptable to the department.

(2) Provide that every hazardous waste facility can be closed and maintained for at least 30 years subsequent to its closure in a manner that protects human health and the environment and minimizes or eliminates the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products to ground and surface waters and to the atmosphere.

(b) In adopting regulations pursuant to subdivision (a), to carry out the purposes of this chapter, the department may specify policy or other contractual terms, conditions, or defenses which are

necessary or are unacceptable in establishing evidence of financial responsibility.

(1) If an owner or operator is in bankruptcy, reorganization, or other arrangement pursuant to Title 11 of the United States Code, or where, with reasonable diligence, jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which this section requires evidence of financial responsibility may be asserted directly against the guarantor who provided the evidence of financial responsibility.

(2) The total liability of any guarantor is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter.

(3) This subdivision does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to the owner or operator, including, but not limited to, the liability of the guarantor for bad faith in either negotiating or in failing to negotiate the settlement of any claim.

(4) This subdivision does not diminish the liability of any person under Section 107 or 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Secs. 9607 and 9611).

(5) For purposes of this subdivision, "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

SEC. 33. Section 10 of this bill incorporates amendments to Section 25123.3 of the Health and Safety Code proposed by both this bill and AB 107. It shall only become operative if (b) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 25123.3 of the Health and Safety Code, and (3) this bill is enacted after AB 107, in which case Section 25123.3 of the Health and Safety Code, as amended by Section 9 of this bill, shall remain operative only until the operative date of AB 107, at which time Section 10 of this bill shall become operative.

SEC. 34. Section 14 of this bill incorporates amendments to Section 25143.2 of the Health and Safety Code proposed by both this bill and AB 817. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1990, but this bill becomes operative first, (2) each bill amends Section 25143.2 of the Health and Safety Code, and (3) this bill is enacted after AB 817, in which case Section 25143.2 of the Health and Safety Code, as amended by Section 13 of this bill, shall remain operative only until the operative date of AB 817, at which time Section 14 of this bill shall become operative.

SEC. 35. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 36. 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 give the State Department of Health Services authority as early as possible to carry out the state hazardous waste control program under the Resource Conservation and Recovery Act of 1976, thereby protecting the public health and safety and the environment, it is necessary that this act take effect immediately.

CHAPTER 1437

An act to add Part 5.5 (commencing with Section 17700) to Division 9 of the Welfare and Institutions Code, relating to minors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Part 5.5 (commencing with Section 17700) is added to Division 9 of the Welfare and Institutions Code, to read:

PART 5.5. CHILDREN WITH SPECIAL HEALTH CARE NEEDS

CHAPTER 1. FINDINGS AND DECLARATIONS

17700. The Legislature finds and declares all of the following:

(a) Many children adjudicated dependents of the juvenile court pursuant to Section 300 and following are, because of abuse, neglect, or exploitation within the family environment, unable to remain safely in their own homes.

(b) Children requiring placement in foster care are, pursuant to Section 675 (5) (a) of Title 42 of the United States Code, entitled to placement in the least restrictive, most family-like setting in close proximity to the parent's home, consistent with the best interest and special needs of the child.

(c) A significant number of children adjudicated dependents of the juvenile court under Section 300 and following who require placement outside their own homes have special health care needs.

Children with biological families who can provide health care services can be discharged from hospital care into home care when it has been determined that the child is medically stable.

(d) Children who have become dependents of the juvenile court may become, because of a lack of appropriate placement options, long-term boarders in hospitals or other health care institutions.

(e) It is, therefore, the intent of the Legislature to support expansion of existing prevention and treatment programs designed to serve the parent and child with special health care needs which are administered by the State Department of Health Services, the State Department of Social Services, and the State Department of Alcohol and Drug Programs.

Further, it is the intent of the Legislature to establish a program to place children with special health care needs in special foster care homes, licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, wherein foster parents are trained by health care professionals, pursuant to the discharge plan of the facility releasing the child being placed, or who is currently, in foster care.

It is further the intent of the Legislature to encourage, to the extent feasible, the placement of children with special health care needs with relatives trained by health care professionals.

CHAPTER 2. DEFINITIONS

17710. Unless otherwise specified in this part:

(a) "Child with special health care needs" means a child adjudged a dependent of the court pursuant to Section 300 and following who has a medical condition which requires specialized in-home health care which may be provided by nonmedical personnel, such as, a foster parent trained to provide this care.

(b) "County" means the county welfare department.

(c) "Department" means the State Department of Social Services.

(d) "Individualized health care plan team" means those individuals who develop a health care plan for a child with special health care needs in foster care, which may include, but shall not be limited to, the child's primary care physician, any involved medical team, the county social worker, a public health nurse, representatives from the California Children's Services program or the Child Health and Disability Prevention Program, regional centers, the county mental health department, the prospective specialized foster family, and where reunification is the goal, the parent or parents, if available.

(e) "Director" means the Director of Social Services.

(f) "Level of care" means a description of the specialized in-home health care to be provided to a child with special health care needs by the foster family.

(g) Medical conditions requiring special in-home health care shall

include dependency upon: internal feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, urinary catheterization, special medication regimens including injections, aerosol treatment, and intravenous or oral medication, or ministrations imposed by tracheostomy, colostomy, ileostomy, or other medical or surgical procedures rendering the child dependent upon ongoing health care and assessment.

(h) "Specialized in-home health care" includes, but is not limited to, those services identified by the child's primary physician as appropriately administered by a foster parent trained by health care professionals pursuant to the discharge plan of the facility releasing the child being placed in, or currently in, foster care.

(i) "Specialized foster care home" means any licensed foster family home or certified family home where the foster parents have been trained to provide specialized in-home health care to foster children.

CHAPTER 3. RESOURCES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS

17720. The Health and Welfare Agency shall designate a department to coordinate sources of funding and services not under the jurisdiction of the department which are available to children with special health care needs in order to maximize the health and social services provided to these children and avoid duplication of programs and funding.

CHAPTER 4. FOSTER CARE

17730. The department shall develop a program to establish foster care homes for children with special health care needs with foster parents trained by health care professionals pursuant to the discharge plan of the facility releasing the child being placed in, or currently in foster care. The program shall conform to the requirements set forth in this chapter, and shall be integrated with the foster care and child welfare services programs authorized by Article 5 (commencing with Section 11400) of Chapter 2 of Part 3 and Chapter 5 (commencing with Section 16500) of Part 4.

This program shall be conducted by county welfare departments in conformance with procedures established by the department in accordance with this chapter.

17731. (a) The county shall develop a plan to place children with special health care needs in foster care. This plan shall be submitted to the State Department of Social Services and the State Department of Health Services, not later than April 1, 1990, before beginning placement of children with special health care needs in specialized foster care homes. This subdivision shall not invalidate any placement made before April 1, 1990. A county which has not submitted a plan by April 1, 1990, shall not continue to make

placements of children with special health care needs until the plan has been submitted.

(b) The county plan shall meet all of the following requirements:

(1) Unless a local lead agency has been designated within the county, as described in Item 4260-113-890 of the Budget Act of 1989, the county department of social services shall be the lead agency with the responsibility of developing the plan to be submitted pursuant to subdivision (a). The county plan shall be formalized in an interagency agreement between the county department of social services and the other county and private agencies that are the involved parties.

(2) Prior to the placement of a child with special health care needs, an individualized health care plan, which may be the hospital discharge plan, shall be prepared for the child and, if necessary, in-home health support services shall be arranged. The individualized health care plan team shall be convened by the county department of social services caseworker, to discuss the specific responsibilities of the foster parents for provision of in-home health care in accordance with the individualized health care plan developed by the child's physician or his or her designee. The plan may also include the identification of any available and funded medical services that are to be provided to the child in the home, including, but not limited to, assistance from registered nurses, licensed vocational nurses, public health nurses, physical therapists, and respite care workers. The individualized health care plan team shall delineate in the individualized health care plan the coordination of health and related services for the child. The plan shall be monitored by the county department of social services caseworker in accordance with applicable regulations.

(3) A child welfare services case plan shall be developed in accordance with applicable regulations, and arrangements made for nonmedical support services.

(4) Foster parents shall be trained by health care professionals pursuant to the discharge plan of the facility releasing the child being placed in, or currently in, foster care. Training shall be provided as needed during the placement of the child and to the child's biological parent or parents when the child is being reunified with his or her family.

(5) Children with special health care needs shall be placed in the home of the prospective foster parent subsequent to training by a health care professional pursuant to the discharge plan of the facility releasing the child being placed in foster care.

(6) Specialized foster care homes shall be monitored by the county according to applicable regulations. The health care plan shall designate which health care professional shall monitor the child's ongoing health care, including in-home health care provided by the foster parent.

(7) The child's individualized health care plan shall be reassessed no less than every six months during the time the child is placed in

the specialized foster care home, to ensure that specialized care payments are appropriate to meet the child's health care needs.

(8) The county shall coordinate the sources of funding and services available to children with special health care needs in order to maximize the social services provided to these children and to avoid duplication of programs and funding.

17732. The county shall place no more than two children at a time in a specialized foster care home except that a third child with special health care needs may be placed in that home when all of the following conditions have been met:

(a) No other placement is available.

(b) The psychological and social needs of the children in placement and the child to be placed will be met by the placement.

(c) The individualized health care plan team responsible for the ongoing care of each child involved has waived the two-child limit.

17733. All documentation prepared by the county concerning the identification of a dependent child as a child with special health care needs, the placement of such a child in a specialized foster care home, assessments and reassessments of the level of care designation, the decision to place more than two children with special health care needs in a home, and contact among the health care team plan members who are monitoring the individualized health care plan of the child, shall be made part of the child's case record. Reports of training provided by the health care professional pursuant to the discharge plan of the facility releasing the child being placed in foster care shall also be included in the case record.

17734. Each county shall report to the department on a regular basis on the conduct and effectiveness of the program provided for in this chapter. These reports shall be submitted in conformance with instructions provided by the department. These reports shall include, but not be limited to, all of the following data:

(a) An estimate of the number of children adjudicated dependents of the juvenile court under Section 300 who have special health care needs during the reporting period.

(b) The number of children with special health care needs in (1) hospitals or other institutional placements, (2) group homes, and (3) small family homes at the beginning of the reporting period.

(c) The number of children with special health care needs in specialized foster care homes.

(d) The number of children with special health care needs placed in specialized foster care homes during the reporting period.

(e) The cost of providing specialized placements for children with special health care needs during the reporting period.

17735. Commencing in 1991, a progress report on the program provided for in this chapter shall be included in the child welfare services report to the Legislature required by Section 16512.

The department shall not evaluate or have any responsibility for the evaluation of the in-home health care provided in specialized foster care homes.

17736. Notwithstanding any other provision of law, including Sections 1250, 1251, 1254, 1270, 1501, 1502, 1505, 1507, 1521, 1530.6 (as added by Chapter 391 of the Statutes of 1977), 1550, 11002, and 11154 of the Health and Safety Code, and Sections 2052, 2725, 2732, and 2795 of the Business and Professions Code, counties shall be permitted to place children with special health care needs in foster family homes pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, and shall permit a foster parent trained by health care professionals pursuant to the discharge plan of the facility releasing the child to provide specialized in-home health care to that foster child, as described in the individualized health care plan for the child.

17737. Nothing in this chapter shall be construed to prevent children with special health care needs who have adoption as a case plan goal from receiving services under this program.

17738. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall adopt emergency regulations to implement the program provided for in this chapter. The emergency regulations shall remain in effect for no more than 120 days, unless the department complies with all the provisions of Chapter 3.5 (commencing with Section 11340) as required by subdivision (e) of Section 11346 1 of the Government Code.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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 children with special health care needs to enjoy the benefits of the least restrictive, most family-like setting consistent with the best interest and special needs of the child, and to prevent these children from languishing in hospitals or other health care institutions, it is necessary for this act to take effect immediately.

CHAPTER 1438

An act relating to the Oakland Unified School District, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. The sum of ten million dollars ($10,000,000) is hereby appropriated from the General Fund to the Oakland Unified School District for the purpose of an emergency loan to the district in compliance with Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code.

SEC. 2. The Superintendent of Public Instruction shall require Oakland Unified School District to submit to the Superintendent of Schools for Alameda County the following, the cost of which shall be borne by the district:

(a) A report issued by an independent auditor approved by the county superintendent on the financial conditions and budgetary controls of the district.

(b) A written management review conducted by a qualified management consultant approved by the county superintendent.

(c) A plan adopted by the governing board to resolve the financial and mangement problems of the district. The plan shall include, but not be limited to, the following:

(i) A schedule of changes in financial and management policies and practices necessary to correct all deficiencies or weaknesses identified in either the audit report or the management review.

(ii) The school board shall adopt policies relating to delegation of authority and responsibility concerning day-to-day operations of the district.

(iii) A plan for accumulating a 2 percent reserve for economic uncertainty in accordance with the standards and criteria established by the State Board of Education under Section 33127 of the Education Code.

(iv) A plan for ensuring that the district will maintain a positive balance in all funds for a period of at least two years.

(v) If an emergency loan is made to the district, a plan for its repayment.

(d) The district report, review, and plan shall be submitted to the county superintendent on a date set by the Superintendent of Public Instruction. If the district fails to submit the report, review, and plan by the date set, the Superintendent of Public Instruction may appoint a trustee who, in addition to the authority created by Section 5 of this act, shall have authority to prepare and submit a plan on behalf of the district. The trustee shall submit the plan to the

Superintendent of Public Instruction for approval.

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. (a) If the district complies with the time limits established under subdivision (d) of Section 2 of this act, the county superintendent of schools shall review, and provide written comment on, the independent auditor's report, the management review, and the district fiscal and management plan. Those written comments 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 have 15 working days to either revise the district plan to respond to the concerns expressed by the county superintendent or appeal the county superintendent's disapproval to the Superintendent of Public Instruction.

(b) Upon his or her approval of the district fiscal and management plan, the county superintendent of schools shall submit copies of the report, review, plan, and written comments to the Superintendent of Public Instruction, the Auditor General, the Joint Legislative Budget Committee, the Director of Finance, and the Controller.

(c) Upon receipt of either a plan approved by the county superintendent or an appeal by the district, the Superintendent of Public Instruction shall review the report, review, plan, and comments of the county superintendent and district and determine whether the actions proposed by the district are realistic and likely to place the district in a sound condition. The Superintendent of Public Instruction shall then either approve the district's plan and so certify to the Director of Finance or direct the district governing board in writing as to the changes necessary to obtain approval of the plan. The district governing board shall have 10 working days to revise the district plan in accordance with these directions and resubmit the plan to the Superintendent of Public Instruction. If the district fails to submit a plan that conforms to the superintendent's directions, the superintendent shall appoint a trustee who, in addition to having the authority set forth in Section 5 of this act, shall prepare and submit the fiscal and management plan on behalf of the district to the Superintendent of Public Instruction for approval.

(d) 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. 4. (a) During the process of obtaining the audit report and management review and developing the financial and management plans, the district shall also formulate, adopt, and obtain approval for its 1989–90 budget under the provisions of Section 42127 of the Education Code. The Superintendent of Public Instruction shall appoint a trustee who shall have access to all financial data he or she

deems relevant to advise the district and to assist the district in formulating its budget and in developing the plans required by this act.

Upon appointment of a trustee under this provision, Section 42127 of the Education Code shall not apply to the district during the 1989–90 budget process.

(b) The district shall, no later than 30 days after the appointment of the trustee, submit a revised 1989–90 budget to the Superintendent of Public Instruction for approval. The Superintendent of Public Instruction shall either approve the district's budget or develop an alternate budget which shall be imposed upon the district for the 1989–90 fiscal year.

(c) For the 1989–90 fiscal year, the sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the State Department of Education to pay for the costs of the trustee until the trustee is terminated by the Superintendent of Public Instruction.

(d) The trustee shall be advisory only until the Superintendent of Public Instruction exercises his or her powers of appointment under subdivision (d) of Section 2, subdivision (c) of Section 3, or subdivision (a) or (e) of Section 5 of this act.

(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. 5. (a) At the times stated in subdivision (d) of Section 2, subdivision (c) of Section 3, and subdivision (e) of Section 5 of this act, the Superintendent of Public Instruction may 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 of Public Instruction 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 of Public Instruction until the plan approved pursuant to Section 2 of this act has been implemented. The plan shall be deemed implemented when (i) an independent auditor selected by the Superintendent of Public Instruction and the Controller submits a report stating that the financial and management policies and practices of the district are adequate and the identified deficiencies and weaknesses have been corrected; and (ii) that report is approved by the Superintendent of Public Instruction. The costs of this audit shall be borne by the district. Notwithstanding any other provisions of law, all reports submitted to the trustee shall be public records.

(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 governing board that, in the judgment of the trustee, may adversely affect the financial condition of the district. The trustee shall approve or disapprove all reports and other

materials required from the district under the provisions of this act or as a condition of implementing the district's fiscal and management plan. The Superintendent of Public Instruction, upon the recommendation of the trustee, may reduce any apportionment to the district in an amount up to two hundred dollars ($200) per day and exercise his authority under Education Code Section 42129 for each late or unacceptable report or other material required under this act.

(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, the amount necessary to apply 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 all purposes of errors and omissions liability insurance, the trustee appointed pursuant to this act shall be deemed to be an employee of Oakland Unified School District.

(e) Other provisions of this act notwithstanding, the Superintendent of Public Instruction may, in his or her discretion, appoint a trustee at any time he or she determines that the district has failed or refused to perform its duties under Section 2 of this act and Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code with diligence and in good faith, or the district acts in a manner that is inconsistent with any plan developed under this act, or that members of the district governing board are attempting to interfere in the day-to-day process of developing and or implementing the district plans. Any action taken by the district that is inconsistent with its plans shall be rescinded by the trustee.

(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. 6. (a) In addition to the financial and management improvement plans required by Section 2 of this act, the district shall also develop a plan to improve the educational achievement of all district students, including, but not limited to, students with limited English proficiency, the educationally disadvantaged, handicapped students, the college bound, and gifted students. The plan shall be consistent with the financial resources of the district and consistent with the other plans developed under this act and shall include, but shall not be limited to, improvements needed to produce.

(i) High quality curricular content and teaching methodologies at both the elementary and secondary levels.

(ii) A full spectrum of subject matter coursework at all elementary schools.

(iii) A counseling program that encourages secondary students to enroll in high quality content courses.

(iv) A comprehensive staff development plan to improve the

subject matter knowledge and teaching skills of all teaching staff.

(v) A school and classroom environment that promotes the learning process and a working relationship with parents and the community.

(b) When the Superintendent of Public Instruction so directs, the district shall obtain a districtwide review of its educational program to determine the needs to be addressed in the program improvement plan developed by the district under subdivision (a) of Section 6 of this act. This review shall be conducted by qualified educators trained in program review and selected by the Superintendent of Public Instruction. The cost of this review shall be borne by the district.

(c) The district's educational program improvement plan shall be submitted to the Superintendent of Public Instruction for approval by a date set by the superintendent. If the district does not submit a plan by the established date or the district's proposed plan is inadequate, the Superintendent of Public Instruction shall develop an alternate program improvement plan that the local board shall adopt, or, within 30 days, make public the fiscal and programmatic reasons why it has not adopted the alternate plan.

(d) Any trustee appointed under this act, in consultation with the Superintendent of Public Instruction, shall monitor the district's compliance with its educational program improvement plan and ensure that all fiscal and management policies and practices are consistent with the educational program improvement plan.

(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. 7. (a) On or before October 31 of the year following approval of the district's plans by the Superintendent of Public Instruction, and each October 31 thereafter until the plans have been implemented, the governing board of the district shall prepare a report on the financial, management, and programmatic conditions of the district. The district shall submit the report to the trustee for review. Upon the trustee's approval of the report, the district shall transfer copies to the county superintendent of schools, the Superintendent of Public Instruction, and the Controller. The report shall include, but not be limited to, the following information:

(i) Specified actions taken to improve district management and program quality and reduce expenditures or increase income, including the cost savings and increased income resulting from those actions.

(ii) A copy of the adopted budget for the relevant fiscal year.

(iii) Reserves for economic uncertainty.

(iv) Status of employee contracts.

(v) Obstacles to the implementation of the approved fiscal, management, and programmatic plans.

(b) For each fiscal year during the period of implementation of

the plans required under this act, the district's financial condition shall be audited by an independent auditor selected by the county superintendent or the Controller at the discretion of the county superintendent.

(c) 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. 8. Any trustee appointed by the Superintendent of Public Instruction shall adhere to existing provisions contained in the Government Code relating to collective bargaining between the local governing board and exclusive representative organizations for employees.

SEC. 9. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the Calfiornia Constitution.

SEC. 10. Acceptance of an emergency apportionment by the Oakland Unified School District shall constitute a desire for and request of the funds by the district whereby no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution.

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 that funds may be disbursed to the Oakland Unified School District before the end of the current fiscal year, and that a trustee will be appointed to monitor and review the operation of the Oakland Unified School District at the earliest opportunity, it is necessary that this act take effect immediately.

CHAPTER 1439

An act to amend Section 17702.1 of, and to add Section 17705.7 to, the Education Code, relating to school facilities.

[Approved by Governor October 2, 1989 Filed with Secretary of State October 2, 1989]

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

SECTION 1. Section 17702.1 of the Education Code is amended to read:

17702.1. As used in this chapter, construction shall include, but not be limited to, reconstruction, modernization, and replacement of facilities, and the performance of deferred maintenance activities on facilities pursuant to rules and regulations regarding those activities as may be adopted by the board. Funding for deferred maintenance activities for a facility may be approved under this chapter without regard to whether project funding for the reconstruction, modernization, or replacement of the facility is prohibited under Section 17721.

SEC. 2. Section 17705.7 is added to the Education Code, to read:

17705.7. In addition to the reductions in the amount of the local matching share requirement that are established under subdivision (b) of Section 17705.5, the amount of that local matching share requirement shall be reduced by a sum equal to the amount of any proceeds of the fees or other requirements collected during the described period of time that are applied by the district, directly or indirectly, to pay any contractual obligation that was incurred by the district prior to January 1, 1987, for the purpose of funding the construction or reconstruction of school facilities. As a condition of qualifying for the reduction set forth in this section, the applicant school district shall submit to the board a written certification to the effect that the district intended, at the time the contractual obligation was incurred, to subsequently pay that obligation with the proceeds from a fee or other requirement levied against development projects for the construction or reconstruction of school facilities. Any increase in school facilities area resulting from that construction or reconstruction shall be included, notwithstanding any other provision of law, in the calculation of the area of existing adequate school construction of that district.